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सं. 51] नई दिल्ली, दिसम्बर 15—दिसम्बर 21, 2013, शनिवार/अग्रहायण 24—अग्रहायण 30, 1935

No. 51] NEW DELHI, DECEMBER 15—DECEMBER 21, 2013, SATURDAY/AGRAHAYANA 24—AGRAHAYANA 30, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड)

नई दिल्ली, 9 दिसम्बर, 2013

का०आ० 2682.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में राजस्व विभाग, केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड के निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:—

सहायक आयुक्त का कार्यालय,

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर,

डी नं० 06-20, बीट मार्किट के सामने,

हैदराबाद रोड, नालगोंडा-508001

[फा० सं० ई-11017/1/2012-हिंदी-2]

चन्द्र भान नारनौली, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 9th December, 2013

S.O. 2682.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (use of official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Department of Revenue, Central Board of Excise & Customs, whereof more than 80% of the staff have acquired the working knowledge of Hindi:

Office of the Assistant Commissioner,
Customs, Central Excise & Service Tax,
D.No. 6-20, opposite to Beat Market,
Hyderabad Road, Nalgonda-508001.

[F.No. E-11017/1/2012-Hindi-II]

CHANDER BHAN NARNAULI, Director (OL)

(कार्यालय मुख्य आयकर आयुक्त)

जयपुर, 11 दिसम्बर, 2013

सं. 10/2013-14

का०आ० 2683.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिये कथित धारा के उद्देश्य से सेंट्रल टैगोर पब्लिक स्कूल समिति, रिंगस, जिला सीकर को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखंड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: मुआआ/अआआ/(मु०)/जय/10(23सी)
(vi)/2013-14/ 5765]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

(OFFICE OF THE CHIEF COMMISSIONER
OF INCOME TAX)

Jaipur, the 11th December, 2013

No. 10/2013-14

S.O. 2683.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "Central Tagore Public School Samiti, Ringas, District Sikar" for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/ITO(Tech.)/10(23C)(vi)/2013-14/5765]

ATULESH JINDAL, Chief Commissioner of Income-tax

स्वास्थ्य और परिवार कल्याण मंत्रालय

[आयुर्वेद, योग व प्राकृतिक चिकित्सा, यूनानी, सिद्ध एवं होम्योपैथी (आयुष) विभाग]

नई दिल्ली, 9 दिसम्बर, 2013

का०आ० 2684.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथासंशोधित 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, स्वास्थ्य एवं परिवार कल्याण मंत्रालय के आयुर्वेद, योग व प्राकृतिक चिकित्सा, यूनानी, सिद्ध एवं होम्योपैथी (आयुष) विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है:—

1. “राष्ट्रीय आयुर्वेद औषधि विकास अनुसंधान संस्थान, कोलकाता”

[सं ई-11018/1/2013-आयुष (राभा०)]

एस० श्रीनिवास, उप सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

[Department of Ayurveda, Yoga and Naturopathy, Unani, Sidha and Homeopathy (AYUSH)]

New Delhi, the 9th December, 2013

S.O. 2684.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office under the administrative control of the Department of AYUSH, Ministry of Health & Family Welfare, where more than 80% staff have acquired the working knowledge of Hindi:

1. "National Research Institute of Ayurvedic Drug Development, Kalkata"

[No. E-11018/1/2013-AYUSH (O.L.)]

S. SRINIVAS, Dy. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 दिसम्बर, 2013

का०आ० 2685.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार निम्नलिखित अधिकारियों को उनके नाम के सामने दर्शायी गई अवधि के लिए या अगले आदेश होने तक, जो भी पहले हो, तेल उद्योग विकास बोर्ड के सदस्य के रूप में, एतद्वारा नियुक्त/पुनर्नियुक्त करती है:—

क्रम सं०	अधिकारी का नाम	से	तक
1	श्री सुधीर वासुदेवा, अध्यक्ष एवं प्रबंध निदेशक ओएनजीसी	03-10-2013	22-02-2014
2	श्री बी० सी० त्रिपाठी अध्यक्ष एवं प्रबंध निदेशक, गेल	01-08-2013	31-07-2015
3	श्री एस० वरदराजन अध्यक्ष एवं प्रबंध निदेशक बीपीसीएल	01-10-2013	30-09-2015

[फा० सं० जी-35012/2/91-वित्त-II]

नोवस किन्डो, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th December, 2013

S.O. 2685.—In exercise of the powers conferred by Sub-section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints/re-appoints the following officers as a member of the Oil Industry Development Board for the period shown against their names or until further orders, whichever is earlier:

S.No.	Name of the officer	From	To
1.	Shri Sudhir Vasudeva, CMD, ONGC	03.10.2013	28.02.2014
2.	Shri B.C.Tripathi, CMD, GAIL	01.08.2013	31.07.2015
3.	Shri S.Varadarajan, CMD, BPCL	01.10.2013	30.09.2015

[F.No. G-35012/2/91-Fin.II]

NOAS KINDO, Under Secy.

नई दिल्ली, 11 दिसम्बर, 2013

का.आ. 2686.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3) (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा, श्रीमती अंजुली चिब दुग्गल, अपर सचिव (व्यय), वित्त मंत्रालय को दिनांक 15-11-2013 से 14-11-2015, या अगले आदेश होने तक, तेल उद्योग विकास बोर्ड के सदस्य के रूप में पुनर्नियुक्त करती है।

[फा सं जी-35012/2/91-वित्त-II]

नोवस किन्डो, अवर सचिव

New Delhi, the 11th December, 2013.

S.O. 2686.—In exercise of the Powers conferred by Sub-section (3) (b) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby re-appoints Smt. Anjuly Chib Duggal, Addl. Secretary (Exp.), Ministry of Finance, as a member of the Oil Industry Development Board with effect from 15.11.2013 to 14.11.2015, or until further orders.

[F.No. G-35012/2/91-Fin.II]

NOAS KINDO, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 22 नवम्बर, 2013

का.आ. 2687.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार श्री मरियादोस स्टोन कुअररी ओनर चैन्नई के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 33/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं एल-29012/2/2013-आई आर (एम)]

जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd November, 2013

S.O. 2687.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2013) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sri P. Mariyadoss, Stone Quarry Owner, Chennai and their workman, which was received by the Central Government on 21/11/2013.

[No. L-29012/2/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Friday, the 4th October, 2013

PRESENT : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 33/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of P. Mariyadoss, Stone Quarry Owner and their workman)

BETWEEN

Sri S. Ramachandran : 1st Party/Petitioner
S/o Sadasivam Nadar

AND

Sri P. Mariyadoss : 2nd Party/Respondent
Stone Quarry Owner
Old No. 18, Doraisamy Reddy Street,
Near Agarwal Eye Hospital,
Tambaram West,
Chennai-600045

APPEARANCE:

For the 1st Party/Petitioner : Sri G. Anabalagan & S.M.
Nelson Nivas, Advocates

For the 2nd Party/
Management : M/s. Balan Haridas,
Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-29012/2/2013-IR(M) dated 01.03.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

"Whether the action of termination from service of the petitioner Sri S. Ramachandran, a Supervisor of Stone Quarry by Sri P. Mariyadoss, Stone Quarry Owner, is legal and justified? What relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 33/2013 and issued notices to both sides.

3. Though the First Party has entered appearance through his counsel, there was no representation for the First Party continuously. In spite of that it was being posted for Claim Statement. When the case came up for hearing on 05.09.2013, the counsel for the Second Party has represented that the First Party has expired. On that day also there was no representation on the side of the First Party. The case was posted to this date in spite of this. Today also there was no representation for the First Party. So the Tribunal is not in a position to proceed with the case. So the ID is only to be closed.

4. For the above reasons, the ID is closed. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th October, 2013).

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked :**On the petitioner's side**

Ex.No.	Date	Description
	N/A	

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2688.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया सीमेंट्स लिमिटेड शंकर नगर पोस्ट-627357 के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 7/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं एल-29011/19/2009-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2688.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2011) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. India Cements Ltd., Sankar Nagar Post-627357 and their workman, which was received by the Central Government on 21/11/2013.

[No. L-29011/19/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Monday, the 7th October, 2013

PRESENT : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 7/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of India Cements and their workmen)

BETWEEN

The General Secretary : 1st Party/Petitioner
Cement & Quarry Workers Union
173-F, Madurai Road,
Sankar Nagar, Post-627357

AND

The Senior General Manager : 2nd Party/Respondent
M/s India Cements Ltd.
Sankar Nagar Works,
Sankar Nagar, Post-627357

Appearance:

For the 1st Party/Petitioner : Absent

For the 2nd Party/Management : Sri S. Jayaraman,
H. Balaji, Advocates**AWARD**

The Central Government, Ministry of Labour and Employment vide its Order No. L-29011/19/2009-IR(M) dated 06.01.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

"Whether the action of the management of India Cements Ltd. in transferring Sri A. Kulandai Jesu, R. Rangasamy and Sri N. Krishnan is just and legal?"
What relief the workers concerned are entitled to and from which date?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 7/2011 and issued notices to both sides.

3. The First Party has entered appearance and filed Claim Statement. The Second Party, though filed Vakalat has not so far filed any Counter Statement. Both parties have been absent continuously. There was no representation also on either side. So this Tribunal is not in a position to proceed with the case. The First Party has not produced any material to establish the claim made in the Claim Statement. So the reference is only to be closed.

4. Therefore, the ID is closed. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th October, 2013).

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner union : None

For the 2nd Party/Management : None

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
	N/A	

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2689.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया सीमेंट्स लिमिटेड शंकर नगर पोस्ट-627357 के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 8/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं एल-29011/17/2009-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2689.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. India Cements Ltd., Sankar Nagar Post-627357 and their workman, which was received by the Central Government on 21/11/2013.

[No. L-29011/17/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 7th October, 2013

PRESENT : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 8/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of India Cements and their workmen)

BETWEEN

The General Secretary : 1st Party/Petitioner/
Cement & Quarry Workers Union
Union
173-F, Madurai Road
Sankar Nagar Post-627357

AND

The Senior General Manager : 2nd Party/Respondent
M/s India Cements Ltd.
Sankar Nagar Works
Sankar Nagar Post-627357

APPEARANCE:

For the 1st Party/Petitioner : Absent

For the 2nd Party/Management : Sri S. Jayaraman,
H. Balaji, Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-29011/17/2009-IR(M) dated 06.01.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

"Whether the action of the management of India Cements Ltd. in transferring Sri A. Kulandai Jesu, R. Rangasamy and Sri N. Krishnan is just and legal?"
What relief the workers concerned are entitled to and from which date?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 8/2011 and issued notices to both sides.

3. The First Party has entered appearance and filed Claim Statement. The Second Party, though filed Vakalat has not so far filed any Counter Statement. Both parties have been absent continuously. There was no representation also on either side. So this Tribunal is not in a position to proceed with the case. The First Party has not produced any material to establish the claim made in the Claim Statement. So the reference is only to be closed.

4. Therefore, the ID is closed. The reference is answered accordingly. (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th October, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner union : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
	N/A	

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 22 नवम्बर, 2013

कांआ 2690.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडिया सीमेंट्स लिमिटेड शंकर नगर पोस्ट 627357 के प्रबंधन के संबंध में निर्विवाद और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चैन्नई के पंचाट (संदर्भ संख्या 9/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं एल-29011/19/2009-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2690.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2011) of the Cent.Govt.Indus.Tribunal/Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. India Cements Ltd., Sankar Nagar Post- 627357 and their workmen, received by the Central Government on 21/11/2013.

[No. L-29011/19/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 7th October, 2013

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 9/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of India Cements and their workmen)

BETWEEN

The General Secretary : Ist Party/Petitioner
Cement & Quarry Workers Union Union
173-F, Madurai Road,
Sankar Nagar Post- 627357

AND

The Senior General Manager : 2nd Party/Respondent
M/s India Cements Ltd.,
Sankar Nagar Works,
Sankar Nagar Post-627357

APPEARANCE:

For the 1st Party/Petitioner : Absent
For the 2nd Party/Management : Sri S. Jayaraman,
H. Balaji, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-29011/19/2008-IR(M) dated 06.01.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of India Cements Ltd. in transferring Sri A. Kulandai Jesu, R. Rangasamy and Sri N. Krishnan is just and legal?"
What relief the workers concerned are entitled to and from which date?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 9/2011 and issued notices to both sides.

3. The First Party has entered appearance and filed Claim Statement. The Second Party, though filed Vakalat has not so far filed and Counter Statement. Both parties have been absent continuously. There was no representation also on either side. So this Tribunal is not in a position to proceed with the case. The First Party has not produced any material to establish the claim made in the Claim Statement. So the reference is only to be closed.

4. Therefore, the ID is closed. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th October, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner union : None

For the 2nd Party/Management : None

Documents Marked :**On the petitioner's side**

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 22 नवम्बर, 2013

कांआ 2691.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन रेयर एअर्थस सीमेंट्स लिमिटेड कन्याकुमारी के प्रबंधन के संबंध में उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चैन्नई के पंचाट (संदर्भ संख्या 30/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं एल-29011/7/2010-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2691.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers is relation to the management of M/s Indian Rare Earths Ltd., Kanyakumari and their workman, received by the Central Government on 21/11/2013.

[No.L-29011/7/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Friday, the 27th September, 2013

PRESENT : K.P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 30/2010

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Rare Earths Ltd. and their workmen)

BETWEEN

The General Secretary : Ist Party/Petitioner
Kanyakumari Distt. Mineral Union
Workers & Staff Union
Near IRE Ltd.
Manavalakurichi-629252

AND

The Head : 2nd Party/
Indian Rare Earths Ltd. Respondent
Manavalakurichi
Kanyakumari-629252

APPEARANCE:

For the 1st Party/Petitioner : M/s. S. Arunachalam Associates

For the 2nd Party/Management : M/s. Ramasubramaniam & Associates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-29011/7/2010-IR(M) dated 10.06.2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the punishment of suspension for three days without wages imposed on Sri S. Mohammed Ismail and punishment of suspension for one day without wages imposed on Sri P. Chinna Nadar both vide Office Orders 31.03.2003 by the management of Indian Rare Earths Ltd., Manavalakurichi is legal and just? What relief the workmen concerned who are Office Bearers of Kanaykumari District Mineral Workers & Staff Union entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 30/2010 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The case set out in the Claim Statement is this:

Indian Rare Earths Ltd., Manavalakurichi is Company functioning under the control of the Central Government. The conditions of service of workmen and wages are determined by collective bargaining and settlements are arrived at based on negotiations. The petitioner is one of the four major unions recognized by the Management and is the second largest. Based on the Industrial Dispute between the Respondents Management and the Workmen's Union the Regional Labour Commissioner has fixed conciliation proceedings on 10.07.2001 at 11.00 AM at IREL Guest House, Manavalakurichi. The petitioner being the second largest union as well as party to this dispute Chinna Nadar one of the Secretaries and Mohammed Ismail had been to the Guest House to participate in the conciliation proceedings. But nobody had turned up for the conciliation proceedings. Later Chinna Nadar and Mohammed Ismail, the representatives of the petitioner came to know that the venue for discussion was changed without any intimation to the petitioner. The venue of the conciliation proceedings was made known to the petitioner only on 11.07.2001. So the representatives of the union were not able to attend the conciliation proceedings. The Respondent issued Charge Memo to Chinna Nadar and Mohammed Ismail stating that they have obtained exit pass from the factory and this constitutes misconduct under Sub-Clause 13, 24 and 29 of Clause 41 of the Standing Orders of the Company Chinna Nadar and Mohammed Ismail are the office bearers

of the petitioner worker's union. They were authorized to participate in the conciliation meeting to be held on 10.07.2001. They have given explanation detailing the circumstances that led to their obtaining the joint exit pass. However, without accepting the explanation, an enquiry was ordered against them. Consequent to the report of the enquiry Mohammad Ismail was suspended from work for 3 days without wages and Chinna Nadar was suspended from work for 1 day, also without wages. An Appeal was filed by both workers to the Managing Director. Their appeals were dismissed. The framing of the charge against the two workmen was unwarranted. They have obtained exit pass only to attend the meeting convened by the Labour Conciliation Officer. They have not committed the misconducts alleged against them. The Enquiry Officer, while acquitting the workers of the charges under Sub-Clauses 24 of Clause 41, had confirmed the charges under Clause-13 and 29 of the said Clause. The punishment is not commensurate with the gravity of the charges. The punishment imposed on Mohammad Ismail and Chinna Nadar are to be set aside.

4. The Respondents have filed counter statement contending as follows:

The Petitioner Union has raised Industrial Dispute and the Conciliation Officer had informed the petitioner and management that conciliation meeting would be held on 10.07.2001 at 11.00 AM at Respondent's Guest House at Manavalakurichi. Subsequently, the Respondent had received telegraphic information to the effect that the venue for the meeting is shifted to the Office of LEO (Central), Tuticorin. The telegram was addressed to the Petitioner Union also. The respondent Management had received telephone call from the Office of the LEO, Tuticorin by 11.30 AM on the same day regarding the shifting of the venue for the meeting. As instructed by the Chief General Manager, the Management had passed information to the petitioner union orally regarding the shifting of venue. The Chief General Manager had attended the meeting also. Since the union representatives were absent from the meeting, conciliation was adjourned by the Labour Commissioner. It was subsequently noticed that even after coming to know about the change of venue of the conciliation, the two representatives of the Union Mohammed Ismail and Chinna Nadar went to the Guest House of the Management under the pretext that they are not aware of the change of venue. They had deliberately misled the Section Head and wasted working time. On the basis of the complaint of the Section Head the two employees were issued Charge Memos for wilful neglect of work, for loitering while on duty and for neglect of duty. The contention of the two workers that they had no knowledge of the change of venue of the meeting is not correct. They were properly informed of the shift of venue. Departmental enquiry

was conducted against the two workers separately. It was provided in the enquiry that Mohammed Ismail was informed of the change of venue. It was inferred that this information must have been communicated to Chinna Nadar also. On the basis of enquiry reports punishments were imposed on the two workers. The petitioner is not entitled to any relief. The petition is to be dismissed.

5. The evidence in the case consists of the oral evidence of the WW1, documents marked as Exs. W1 to Ex. W33 on the petitioner's side. No oral or documentary evidence is there on the side of the Respondent.

6. The points for consideration are:

- (i) Whether the punishment imposed on Mohammed Ismail and Chinna Nadar who are the workers of the Respondent and members of the Petitioner Union are legal and justified?
- (ii) To what relief are the workmen entitled?

Points

7. There is no dispute regarding the facts of the case. Mohammed Ismail and Chinna Nadar are workmen of Indian Rare Earths Ltd. Manavalakurichi, the respondent establishment and are also members of Office Bearers of the Petitioner Union which is the second largest union in the Respondent's establishment. The Indian Rare Earths Ltd. has almost 400 workers. The conditions of service of workmen, their wages etc. are determined by collective bargain and consequent settlements. Since the Petitioner Union had raised an Industrial Dispute the Regional Labour Commissioner (Central) had convened a meeting on 10.07.2001. The venue for the meeting was initially fixed as Guest House of the Respondent at Manavalakurichi itself. The Petitioner Union had appointed Chinna Nadar and Mohammad Ismail as its representatives to participate in the discussion to be held before the Regional Labour Commissioner. It seems the Labour Commissioner decided to shift the venue of the meeting to the Office of the LEO, Tuticorin. The representatives of the Management and reached the changed venue in time for discussion. However, Chinna Nadar and Mohammad Ismail, the two representatives of the Union seem to have gone to the Guest House at Manavalakurichi and waited there. According to them, only later they came to know about the change of the venue.

8. Mohammed Ismail and Chinna Nadar had left the work place after obtaining a joint exit pass giving the purpose as attending the meeting convened by the Labour Commissioner at Manavalakurichi. The stand of the Management is that the Union as well as the two representatives of the Union were properly informed of the shift of the venue of the conciliation proceedings, but still the two representatives failed to reach Tuticorin to attend the meeting and wasted time by going out from the work place by obtaining an exit pass based on a wrong representation. The Respondent issued Charge Memo and ordered enquiry against both Chinna Nadar and Mohammad Ismail. The Enquiry Officer conducted separate enquiry against them and found that two of the three charges leveled

against them are established. On the basis of the enquiry report Mohammad Ismail was suspended from work without wages for 3 days and Chinna Nadar for one day.

9. The stand of the Union is that there was no justification at all for proceeding against the two workmen. They were totally unaware of the shift of the venue and under the bonafide belief that the meeting was to take place at Manavalakurichi Guest House itself they had gone there and waited at the place. According to them, only when the representatives of the Management or the conciliation officer had not turned up they had enquired and found that the venue of the meeting had been shifted. According to the Petitioner Union and the workers the punishment imposed was totally unjust and illegal. They seek to set aside the punishment.

10. After the dispute has been referred to this Tribunal, the petitioner has raised a preliminary issue that the enquiry against the two workmen were not held in a fair and proper manner. The issue was heard and my predecessor had entered a finding that the enquiry was held in conformity with the principles of natural justice. It was found that the petitioner had participated in the enquiry and has let in evidence also. It was found by my predecessor that the enquiry was a fair and proper one.

11. An initial argument has been raised by the counsel for the Respondent that this Court having found that the enquiry is fair and proper this Court has no jurisdiction to go into the question whether the punishment imposed on the two workmen was proper. According to the counsel since the enquiry was conducted in a fair and proper manner the finding and the punishment based on such finding is to be accepted. This Court is not competent to interfere with the finding and punishment imposed by the Disciplinary Authority. The counsel has referred to Section-11A of the Industrial Disputes Act and argued that only if the dispute is related to the discharge or dismissal of a workman the Tribunal is competent to set aside the order. According to the counsel the case on hand being not one under Section-11A of the Act, this Court is not competent to interfere in the matter at all. The counsel has referred to the decision of the Apex Court in *General Secretary, South Indian Cashew Factories Workers Union Vs. Managing Director, Kerala State Cashew Development Corporation* reported in AIR 2006 SC 2208 in this respect. The Apex Court has held here that when Section-11A is not applicable, the Labour Court has no power to re-appraise the evidence to find out whether the finding of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. The counsel has also referred to the decision of the Madras High Court in *The Management of Kavarakkal Estate Vs. Presiding Officer, Labour Court* and others reported in 2002 1LLJ 217 in this respect. Here also it was held that when Section-11A is not applicable, in the absence of victimization or unfair labour practice or discrimination or malicious or arbitrary exercise of power, Labour Court has no jurisdiction to interfere with the punishment.

12. The counsel for the petitioner has argued that on an analysis of the circumstances of the case it could be

seen that interference of the Court is required. The counsel has pointed out that even if it is not a case coming under Section-11A of the Act the Tribunal is competent to interfere if the circumstances warrant. In this respect the counsel has referred to the decision of the Apex Court in the Workmen of M/s Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. Management and others and other cases reported in 1973 1SCC 813. In this decision the Apex Court has referred to the various earlier decisions and has enumerated the principles based on those decisions. One of the principle laid down is that when a proper enquiry has been held by an employer and the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the enquiry. The Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an Appellate Authority. The interference with the decision of the employer will be justified only when the findings arrived at the enquiry are perverse or the management is guilty of victimization, unfair labour practice and is malafide. The Apex Court has proceeded to state that after introduction of Section-11A of the Act the Tribunal is at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. It was found that the Tribunal, after the introduction of Section-11A, is clothed with the power to re-appraise the evidence in the domestic enquiry and satisfy itself whether the evidence relied on by an employer establishes misconduct alleged against a workman.

13. It is not disputed by the counsel for the petitioner that the present case is not one coming under Section-11A of the Act. In spite of that, the Tribunal is competent to interfere in the finding and punishment on the basis of the Apex Court's decision, it is pointed out by the Counsel. It is pointed out by the counsel that interference is possible if the findings in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or is malafide. There is no case for the petitioner that the workmen were victimized or that unfair labour practice was imposed upon them. The argument that is advanced by the counsel is that the finding of the Enquiry Officer upon the charge on the workmen is perverse and therefore this court is competent to interfere into the matter. The power of the Tribunal to exercise its right of interference in case the finding of the enquiry is perverse is reiterated by the Apex Court in the South Indian Cashew Factory Workers case referred to earlier. In this, even while stating that the Labour Court has no power re-appraise the evidence if Section-11A is not applicable, it was reiterated that the Labour Court can interfere with the findings of the enquiry if they are perverse. It could be seen from the order of my predecessor regarding fairness of the enquiry that even then the contention of the petitioner is regarding the perversity of the finding. My predecessor has stated in the order that the challenge mostly is against the correctness or illegality of finding in the enquiry and has stated that it is a question to be considered at the final stage of the enquiry. So the argument of the counsel for the Respondent that under no circumstances this Court is competent to interfere with the finding of the domestic enquiry and if it is

not a case coming under Section-11A of the Act could not be accepted.

14. Now the question to be considered is whether the case put forth on behalf of the petitioner that the finding in the enquiry report is perverse is correct. Ex. W17 is the Show Cause Notice and Report of Enquiry of proceedings against Chinna Nadar. Ex. W18 is the Show Cause Notice and enquiry report on Mohammed Ismail. In both cases, the workmen are charged under Clause-41(13) (24) and (29) of the Standing Orders for Workmen of the Respondent. The charges are extracted below:

- a. Wilful and or habitual negligence or neglect of work to the extent of "Wilful Negligence or Neglect of the Work—Sub-clause 13 of the Standing Orders".
- b. Loitering while on duty or absence without permission from place of work to the extent of "Loitering While on Duty—Sub-clause-24 of clause-41".
- c. Neglect of Duty including laziness to the extent of neglect of duty-Sub-Clause-29 of Clause 41.

In both enquiry reports the Enquiry Officer has concluded that willful negligence or neglect of duty including laziness to the extent of neglect of duty under Sub-clause 13 and 29 of Clause-41 of the Standing Orders are proved beyond doubt. At the same time the charge of loitering while on duty or absence without permission from place of work under Sub-clause 24 of Clause-41 was found not established convincingly.

15. It is pointed out by the counsel that once the Enquiry Officer has found that the charge under Sub-clause 24 is not established there was no justification for the Enquiry Officer in giving a finding against the workmen under Sub-clause 13 and 29 of Clause-41. According to the counsel this makes the very finding perverse. The counsel has pointed out that the charge under Sub-clause 13 and 29 flows from Charge under sub-clause 24 *i.e.* loitering while on duty or absence from duty without permission from the place of work. The Enquiry Officer has found that there is no basis of charge for absence from duty without permission since the two workmen had obtained exit pass and had gone out from the work premises on the valid ground that they had to represent the petitioner union in the conciliation proceedings. The charge of wilful neglect of work and also neglect of duty under Sub-clauses 13 and 29 respectively were on the ground that they have left the working place without permission. Once it is found that the charge of absence from duty without permission is not established there would be no justification in entering a finding on neglect of work and also neglect of duty. To this extent the finding of the Enquiry Officer is perverse itself. Once the charge under Clause-41(24) is found against the natural conclusion under Clause-13 and 29 also should have been in favour of the workmen. In this respect the finding against Chinna Nadar requires special consideration. The finding has been that Chinna Nadar was not specifically informed of the change of venue. It was assumed that Mohammed Ismail must have informed Chinna Nadar about the same. The finding of guilt upon

him was on this basis. The finding is that he has abetted the misconduct of his colleague. Once it was found that charge under Clause-41(24) is not established the natural conclusion regarding other charges also should have been the same. The finding of the Enquiry Officers suffers from perversity to this extent and interference of this Tribunal is necessitated in the case. I find that the petitioner is entitled to an order in its favour. The finding of the Enquiry Officer being perverse the punishment imposed on the basis of such finding has no legs to stand. The punishments are to be set aside.

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Chinna Nadar

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

16. Accordingly, the order of the Enquiry Officer against the two workmen are found perverse and the punishments based on those enquiry reports are set aside.

17. The reference is answered against the 1st Party.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th September, 2013).

K.P. PRASANNA KUMARI, Presiding Officer

Ex. No.	Date	Description
1	2	3
Ex. W1	04.07.2001	Notice from Regional Personnel Labour Commissioner, Chennai to the petitioner
Ex. W2	06.07.2001	Change of venue for conciliation, letter noted as Express Telegram from RLC (C)
Ex. W3	07.07.2001 to 10.07.2001	Exit Pass Register
Ex. W4	10.07.2001	Exit Pass issued by the IRE.
Ex. W5	10.07.2001	Telegram to Regional Labour Commissioner by the petitioner
Ex. W6	10.07.2001	Minutes of joint discussion on tripartite meeting
Ex. W7	10.07.2001	Complaint given to Senior Manager (Projects) to the Chief General Manager
Ex. W8	11.07.2001	Charge Memo of P. Chinna Nadar
Ex. W9	11.07.2001	Charge Memo of Mohammed Ismail
Ex. W10	13.07.2001	Letter to RLC © by President (KKDMWU)
Ex. W11	20.07.2001	Charge Memo Explanation of P. Chinna Nadar
Ex. W12	21.07.2001	Charge Memo Explanation of S. Mohammed Ismail
Ex. W13	18.09.2001	Memo enquiry of P. Chinna Nadar
Ex. W14	18.09.2001	Memo enquiry of Mohammed Ismail
Ex. W15	19.12.2001 to 26.03.2002	Enquiry proceedings of P. Chinna Nadar
Ex. W16	20.12.2001 to 01.03.2002	Enquiry proceedings of S. Mohammed Ismail
Ex. W17	17.09.2002	Show Cause Notice alongwith enquiry findings of P. Chinna Nadar
Ex. W18	17.09.2002	Show Cause Notice alongwith enquiry findings of S. Mohammed Ismail
Ex. W19	20.09.2002	Reply of Chinna Nadar to the Show Cause Notice
Ex. W20	20.09.2002	Reply of Chinna Nadar to the Show Cause Notice
Ex. W21	30.03.2003	Punishment order of P. Chinna Nadar

1	2	3
Ex. W22	31.03.2003	Punishment order of S. Mohammed Ismail
Ex. W23	28.04.2003	Appeal from Chinna Nadar to the Appellate Authority
Ex. W24	28.04.2003	Appeal from S. Mohammed Ismail to the Appellate Authority
Ex. W25	18.11.2003	Order passed in appeal alongwith Government letter to Chinna Nadar
Ex. W26	18.11.2003	Order passed in appeal alongwith Government letter to Mohammed Ismail
Ex. W27	23.02.2004	Petition filed before the ALC, Madurai by the Union
Ex. W28	11.10.2006	Conciliation failure report
Ex. W29	29.09.2008	Letter No. HRM/EST/MK/2008 from K. Suresh, Senior Manager (K&IR) to G. Philip, President, MWU
Ex. W30	10.06.2010	Order from Ministry of Labour No. L-29011/7/2010 IR(M)
Ex. W31	22.06.2010	Notice from Labour Court Central Court Industrial Tribunal (ID No. 30/2010)
Ex. W32	14.09.2010 to 27.09.2010	Reply for Selection Process of DPC held on 20.03.2002 and the minutes of the DPC dated 20.03.2002
Ex. W33	27.09.2010	Copy of Minutes dated 20.03.2002 alongwith RTI Letter.
On the Management's side		
Ex. No.	Date	Description
	N/A	

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2692.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मलाजखंड कॉपर प्रोजेक्ट बालाघाट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 206/87) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-7(9)-86-कॉन०II/बी० III(बी०)/डी०IIए]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2692.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 206/87) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Malajkhand Copper Project, Balaghat and their workman, which was received by the Central Government on 21/11/2013.

[No. L-7(9)-86-Con.II/B.III(B)/D.IIA]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/206/87

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,

Bhartiya Khanij Mazdoor Sangh (HMS),

PO Malajkhand,

Distt. Balaghat (MP)

...Workman/Union

Versus

Dy. General Manager,

Malajkhand Copper Project,

PO Malajkhand,

Distt. Balaghat (MP)

...Management

AWARD

(Passed on this 20th day of September 2013)

1. As per letter dated 6-10-87 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-7(9)/86-Con.II/B.III(B)/D.IIA. The dispute under reference relates to:

"Whether the demand of declaring S/Shri Pusoo Idpachi, Kunjilal, Bishahoodas, Yusuf Singh,

Chandrabhan Chourey and Hulas Sam Sahare, watchmen re-designated as Security Guards employed in Malajkhanda Copper Project, Malajkhanda over other security Guards is justified? If not, to what relief the concerned workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Union filed Statement of claim as Page 10/1 to 10/5. Case of Ist party Union is that Malajkhanda Copper Project is public sector undertaking started in 1977 and its construction was also started. To protect the property of the project and guard them from theft, damage. S/Shri Pusoo Idpachi, Kunjilal, Bishahoodas, Yusuf Singh, Chandrabhan Chourey and others were appointed as watchman. Their appointment started from different dates. Initially they were designated as watchman. They are senior to most of the employees in category of security guard. The designation of watchman was found not appropriate and good as a policy decision the employee appointed as watchman were designated as security guards. That the employees in question were re-designated as security guards from 8-1-80. Their remained no separate category of watchman in the project after their re-designation as security guards. That the employees subsequently appointed as security guards were doing similar work in order to avoid confusion in future, the old designated watchman were designated as security guards. Thus employees remained senior for duty for which they were appointed. Their seniority needs to be maintained for the matter of promotions and the appointment of juniors in the category. Union submits that duties of watchman and security guards subsequently appointed were identical. Ist party workman had completed 4 years service prior to their re-designation as security guards. Their seniority should be considered.

The job evaluation of employees of Malajkhanda Copper Project was subsequently done as per Tripartite settlement dated 10-8-84. Said job evaluation had no concern with the matter of seniority and promotion. The job evaluation work pertains only to evaluate the work of employees on basis of job description placing employees in specific pay scales. The security guards who were juniors to them in appointment ignoring previous service record of the Ist party workman working as watchman. To be precise, Ist party workman worked initially appointed as watchman and designated as Security Guard from 8-1-80 claims their seniority from the date of their initial appointments considering that the nature of duty of security guard and watchman are identical.

4. IInd party management filed Written Statement as Page 9/1 to 9/3. Claim of Union is opposed by IInd party. It is submitted that there had been no industrial dispute raised by Union or by the workman. In absence of said dispute, the reference is bad in law. That present dispute relates to the watchman/security guards though they are not employees within the meaning of I.D. Act, 1947. The

reference is bad in law. That designation of watchman was made with a view to give financial benefits with good gesture. The watchman were placed in scale of Rs. 180-248 from 1-1-80. Their designation was changed by management as security guards. Managements specifically mentioned that their other terms of employment shall remain unchanged. Management by re-designating concerned workman did not effect seniority of other security guards. That management never placed all those persons over other security guards so that security of other security guards is affected. Union is claiming that these persons be given seniority and other benefits since 1978. Management did not accept demand of Union. The refusal of demand was for proper reason if the seniority of other security guards would have been affected. The demand of Union was unjustified.

5. Management further submits that there were two tripartite settlements dated 9-8-84 and 10-8-84 on job evaluation. Those settlements were signed in presence of Asstt. Labour Commissioner are binding on Union. Clause "C" provides that any dispute between management and Union shall be referred to the Committee appointed to implement the settlement. The settlement further provides that in case of any difference of opinion amongst the members of the Committee, the matter shall be referred to General Manager whose decision shall be final and binding. On such ground, IInd party prays for rejection of demand of Union.

6. Workman filed rejoinder at Page 16/1 to 16/3 reiterating its earlier contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|-------------------------------------|
| (i) Whether the demand of declaring S/Shri Pusoo Idpachi, Kunjilal, Bishahoodas, Yusuf Singh, Chandrabhan Chourey and Hulas Sam Sahare, watchmen re-designated as Security Guards employed in Malajkhanda Copper Project, Malajkhanda over other security Guards is legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by Union is rejected. |

REASONS

8. As per terms of reference dispute between parties relating to whether the demand of the Union that the watchman re-designated as Security Guards from 8-1-80

should be given seniority over the security guards working is proper. From pleadings there is no dispute that the workman working as Watchman since their initial appointment were re-designated as security guards from 8-1-80. The management denied demand of Union for seniority of the other security guards on the ground that re-designation of Watchman was with a view to give financial benefits but without changing other conditions of service. Workman Chandrabhan Chourey examined himself in support of the claim. As per his evidence, they were appointed as Watchman. As that time, no appointments were made on the post of security guards. That Shival, Bholadutt, Nainsu and Neeraj Singh were appointed as security guards in pay scale Rs. 180. That appointment of Watchman was in pay scale Rs. 150. That security guards were kept above them in merit list. In his cross-examination Chandrabhan Chourey says the appointment of security guards was in pay scale Rs. 180-248. At the time of their appointment, the pay scale was given Rs. 150-200. They were re-designated from 8-1-80. The evidence of workman Hulas Sam Sahare is almost identical to the evidence of Shri Chandrabhan Chourey. As per evidence on record, initial appointment of Ist party workman was as Watchman in Pay scale 150-200 whereas pay scale of Security guards appointed after them was Rs. 180-248. The evidence of both the workmen is silent about the duties assigned to the Watchman and duties assigned to security guard. In absence of such evidence, the claim of Union that duties of Watchman and security guard were similar is not substantiated. When Watchman were re-designated from 1-1-80 and they were given benefit of pay scale 180-248, they are financially benefitted. Prior to their re-designation, the Watchman were not getting the benefit of higher pay scale. No evidence is adduced that duties of both categories of employees is identical. Claim of Union in the matter of seniority cannot be accepted. For above reasons, I record my finding in Point No. 1 in Negative.

9. In the result, award is passed as under:—

- (1) The demand of declaring S/Shri Pusoo Idpachi, Kunjilal, Bishahoodas, Yusuf Singh, Chandrabhan Chourey and Hulas Sam Sahare, watchmen re-designated as Security Guards employed in Malajkhanda Copper Project, Malajkhanda over other Security Guards is not justified.

- (2) Relief prayed by Union is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2693.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रासिम सीमेंट्स रायपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 81/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.11.2013 को प्राप्त हुआ था।

[सं० एल-29012/163/98-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2693.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 81/99) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Grasim Cement, Raipur and their workman, which was received by the Central Government on 21.11.2013.

[No. L-29012/163/98-IR (M)]

JOHN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/81/99

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Janardan Tiwari,
S/o Shri Harinandan Tiwari,
H.No. 464,
Sector-I, Babunagar,
Bhilwara (Rajasthan)

.....Workman

Versus

General Manager,
Grasim Cement,
Rawan, Tehsil Sigma,

Raipur

.....Management

AWARD

(Passed on this 19th day of September 2013)

1. As per letter dated 10-02-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-29012/163/98-IR(M). The dispute under reference relates to:

"Whether the action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Janardan Tiwari, ex-Assistant, HEO, w.e.f. 18-10-97 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were sent to the parties. Ist party workman filed statement of claim at Page 6/1 to 6/3. Case of workman is that he was working

with the IInd party. Any notice was not issued to him, any adverse remarks were not communicated to him. His services were terminated *vide* order dated 18-10-97 without holding enquiry, no chargesheet was issued. The termination without holding enquiry is illegal. The allegation made in the order of dismissal are incorrect. Management has not followed principles of natural justice. The order issued by management is in violation of provision of I.D. Act. On such ground, Ist party prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 10/1 to 10/5. It is case of IInd party that applicant was appointed on 1.4.95 as heavy equipment operator with Grasim Cement. He was dismissed *vide* order dated 18.10.97. The workman was dismissed for serious misconduct assaulting Dr. B.L. Pandey, Chief Medical Officer of Grasim Cement Factory Dispensary and Retd. Civil Surgeon from Govt. of MP. The incident created such a tensed and horrified situation that many of senior officers felt insecure and even expressed unwillingness to work. Under such circumstances it was not possible to issue chargesheet or conduct enquiry against the workman. As such he has been removed.

4. The details of the incident are narrated that on 30.9.97, Suraj Dhafedar son of Shri Paritosh Dhafedar aged 4 to 5 years was brought to Grasim Dispensary where Dr. B.L. Pandey, Retd. Chief Medical Officer Govt. of MP CMO and Incharge was on duty. It was stated that Suraj was bitten by Scorpion. He was administered necessary medicine and discharged. After sometime, he was brought back to dispensary. Since the patient was not responding to the medicine, Dr. B.L. Pandey immediately advised patient's father to take him to Medical College Hospital, Raipur for specilized treatment. The Doctors of Raipur Medical College Hospital tried to save child but unfortunately after some time child expired early morning on 1.10.97. It is further submitted that on 1.10.97, Shri Kushal Chaudhary telephoned to Dy. General Manager that he alongwith other workers wants to company vehicle to bring dead body of child. Dy. General Manager directed Shri Shekhavat, Security Officer to make arrangement of one vehicle and ambulance to bring the dead body. It is alleged that at about 6.40 A.M., Dr. B.L. Pandey telephoned to Shri J.R. Mohan Vice President (P&A) that unknown persons are thereatening him on telephone of death of child. After sometime, Dy. General Manager informed to Shri J.R. Mohan that some workers with intention to assault Dr. Pandey are rushing towards guest house which is situated within the factory premises. After sometime again Security Officer telephoned to Dy. General Manager and he informed him that the workers were quite annoyed and they are abusing Dr. Pandey and there was tense atmosphere. The workers are planning to assault Dr. Pandey. The Security Officer communicated all these developments to Shri Mohan, Vice President. As soon as Shri Mohan received that messages from Dr. B.L. Pandey

Shri Bhandari and Shri Shekhawat rushed towards guest house and saw that about 30 to 35 workers had gheraoed guest house and Dr. Pandey also saw that the applicant alongwith Ashok Shrivastava, Janardhan Tiwari, Rajendra Kumar Saxena, C.R. Nair, Ramu Sahu, Chander Shekhar Kar were dragging out Dr. B.L. Pandey by his leg from guest house. It is also submitted that applicant along with other workers were abusing Dr. Pandey in filthy language, the reatening to kill him as he had killed the boy. The incident was reported by Shri Pandey to Police. The offence was registered against workman and other persons. It is submitted that workman had committed misconduct defined under Section 13(1)F of Standing Orders Act applicable to Grasim Lime Stone Mines. IInd party further submits that the chargesheet could not be issued, no enquiry could be held in the existing situation. Management seeks permission to prove the alleged misconduct on behalf of workman. For serious misconduct committed by workman, his services were terminated. Action of IInd party is legal. It is prayed that relief prayed by workman be rejected.

5. Workman filed rejoinder at Page 14/1 to 14/2 denying the contentions in Written Statement filed by IInd party and reiterating its contention in the statement of claim filed by him.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of Grasim Cement (A unit of Grasim Industrues Ltd.), Rawan, Raipur in dismissing Shri Janardan Tiwari, ex-Assistant, HEO, <i>w.e.f.</i> 18.10.97 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

7. Workman challenging order of his dismissal dated 18.10.97 contending that he was dismissed from service without issuing any chargesheet, no notice issued to him. The allegation of workman are denied. The management submits that under the circumstances, the chargesheet could not be issued and it was not possible to hold enquiry. Management seeks permission to prove misconduct.

8. Workman filed affidavit of his evidence stating that the services were dismissed from 18.10.1978 whithout issuing chargesheet though notice was issued. Reasons given in order of trmination about the incident of beating to Dr. Pandey is false. He has not concern with the said incident. In his cross-examination workman says he was

taking active part in Union activities. When he was in service Union was not established, he was knowing Dr. Pandey. Vice President Shri G.R. Mohan and Shri Shekhawat had no enmity with them. He was prosecuting for offence of assault on Dr. Pandey. The case was pending. His affidavit was of denial of beating inspite of Dr. Pandey.

9. Management filed affidavit of Dr. Pandey, Vice President G.R. Mohan, Security Officer Shri Shekhawat. All of them in their affidavits have supported the contention of management that on 30.9.97, while Dr. Pandey was on duty, a boy of 4-5 years S/o Shri Paritosh Dhafedar suffered bite of scorpion, he was treated by Dr. Pandey. Thereafter the boy was taken to Raipur Medical College for treatment where he died. Where Dr. Pandey was staying was gheraoed. Dr. Pandey was assaulted, abused and beaten. He had submitted report to Police Station. Dr. Pandey in his affidavit has stated that the assaulting workers were stopped after intervention by Shri G.R. Mohan, Vice President. That he had suffered injuries on head, left eye, back and all body parts. That Shri Janardhan Tiwari was one of assailants. There was no enmity with those persons, Dr. B.L. Pandey in his cross-examination contends that on 2nd day of death of boy, crowd had reached to his place around 8 A.M., 8-10 persons entered his room. 10-15 persons were standing outside. He was knowing those persons by face as they were coming for treatment to the hospital. Criminal case prosecuted against them is pending. That workman Janardhan Tiwari and other persons were among the assailants. That he had lost his senses out of beating. He was beaten by kicks by the assailants. He denied suggestion of the counsel of Ist party that he was supporting the management for termination of services of the workman. Document Exhibit M-1 is filed related to the Criminal case.

10. The evidence of Vice President J.R. Mohan remained unchallenged. Security Officer Shekhawat fully supported evidence of Dr. Pandey about the incident that he was abused using filthy language and assaulted by workman Janardhan Tiwari, Ashok Shrivastava, Rajendra Kumar Saxena and others. In his cross-examination, witness says he is not aware which rules applies to the Ist party workman. Before dismissal of service, chargesheet was not issued to the workman. He claims ignorance whether notice was issued or retrenchment compensation was paid by the management. His evidence about factual matrix is not shattered in his cross-examination. Rather any question in his evidence about incident in affidavit was not asked. His evidence remained unchallenged. His evidence fully corroborate evidence of Dr. Pandey. He was working as Medical Officer in Grasim Cement. Out of death of the boy, the incident occurred. Workers including workman has abused and assaulted Dr. Pandey. It is certainly a serious misconduct. The evidence of workman is only by way of denial. Considering the burden of proof in the matters of domestic enquiry is different to the burden of proof in

criminal cases, the evidence adduced by management is sufficient to prove that Ist party workman had participated in the incident to assault and beating of Dr. Pandey. Therefore action of management dismissing workman cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

11. In the result, award is passed as under:—

- (1) Action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Janardan Tiwari, ex-Assistant, HEO, w.e.f. 18.10.97 is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

कांआ 2694.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रासिम सीमेंट्स रायपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 118/99) प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-29012/162/98-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2694.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 118/99) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Grasim Cement, Raipur and their workman, which was received by the Central Government on 21/11/2013.

[No. L-29012/162/98-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/118/99

PREIDING OFFICER: SHRI R.B. PATLE

Shri Ashok Shrivastav,
Qt. No. J-19, Vill & PO Dalmiya,
PS & Tehsil Dehri Sone,
Rohtas (Bihar)

...Workman

Versus

General Manager,
Grasim Cement,
Rawan, Tehsil Sigma,
Raipur

...Management

AWARD

(Passed on this 19th day of September, 2013)

1. As per letter dated 3-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-29012/162/98-IR(M). The dispute under reference relates to:

"Whether the action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur is dismissing Shri Ashok Shrivastav, ex-HEO, *w.e.f.* 18-10-97 is legal and justified? If not, to what relief the workman is entitled?"

2 After receiving reference, notices were sent to the parties. Ist party workman filed statement of claim at Page 6/1 to 6/4. Case of workman is that he was working with the IInd party. Any notice was not issued to him, any adverse remarks were not communicated to him. His services were terminated *vide* order dated 18-10-97 without holding enquiry, no chargesheet was issued. The termination without holding enquiry is illegal. The allegation made in the order of dismissal are incorrect. Management has not followed principles of natural justice. The order issued by management is in violation of provision of I.D. Act. On such ground, Ist party prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 10/1 to 10/5. It is case of IInd party that applicant was appointed on 1-4-95 as heavy equipment operator with Grasim Cement. He was dismissed *vide* order dated 18-10-97. The workman was dismissed for serious misconduct assaulting Dr. B.L. Pandey, Chief Medical Officer of Grasim Cement Factory Dispensary and Retd. Civil Surgeon from Govt. of MP. The incident created such a tensed and horrified situation that many of senior officer felt insecure and even expressed unwillingness to work. Under such circumstances it was not possible to issue chargesheet or conduct enquiry against the workman. As such he has been removed.

4. The details of the incident are narrated that on 30-9-97, Suraj Dhafedar, son of Shri Paritosh Dhafedar aged 4 to 5 years was brought to Grasim Dispensary where Dr. B.L. Pandey, Retd. Chief Medical Officer Got. of MP CMO and Incharge was on duty. It was stated that Suraj was bitten by Scorpion. He was administered necessary medicine and discharged. After sometime, he was brought back to dispensary. Since the patient was not responding to the medicine, Dr. B.L. Pandey immediately advised patient's father to take him to Medical College Hospital, Raipur for specialized treatment. The Doctors of Raipur Medical College Hospital tried to save child but unfortunately after some time child expired early morning on 1-10-97. It is further submitted that on 1-10-97, Shri Kushal Chaudhary telephoned to Dy. General Manager that he along with other workers wants the company vehicle

to bring dead body of child. Dy. General Manager directed Shri Shekhawat, Security Officer to make arrangement of one vehicle and ambulance to bring the dead body. It is alleged that at about 6.40 A.M., Dr. B.L. Pandey telephoned to Shri J.R. Mohan Vice President (P&A) that unknown persons are threatening him on telephone of death of child. After sometime, Dy. General Manager informed to Shri J.R. Mohan that some workers with intention to assault Dr. Pandey are rushing towards guest house which is situated within the factory premises. After sometime again Security Officer telephoned to Dy. General Manager and he informed him that the workers were quite annoyed and they are abusing Dr. Pandey and there was tense atmosphere. The workers are planning to assault Dr. Pandey. The Security Officer communicated all these developments to Shri Mohan, Vice President. As soon as Shri Mohan received the messages from Dr. B.L. Pandey, Shri Bhandari and Shri Sikhawat rushed towards guest house and saw that about 30 to 35 workers had gheraoed guest house and Dr. Pandey also saw that the applicant along with Kushal Ram, Janardhan Tiwari, Rajendra Kumar Saxena, C.R. Nair, Ramu Sahu, Chander Shekhar Kar were dragging out Dr. B.L. Pandey by his leg from guest house. It is also submitted that applicant along with other workers were abusing Dr. Pandey in filthy language, threatening to kill him as he had killed the boy. The incident was reported by Shri Pandey to Police. The offence was registered against workman and other persons. It is submitted that workman had committed misconduct defined under Section 13(1)F of Standing Orders Act applicable to Grasim Lime Stone Mines. IInd party further submits that the chargesheet could not be issued, no enquiry could be held in the existing situation. Management seeks permission to prove the alleged misconduct on behalf of workman. For serious misconduct committed by workman, his services were terminated. Action of IInd party is legal. It is prayed that relief prayed by workman be rejected.

5. Workman filed rejoinder at Page 15/1 to 15/2 denying the contentions in Written Statement filed by IInd party and reiterating its contention in the statement of claim filed by him.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Ashok Shrivastav, ex-HEO, <i>w.e.f.</i> 18-10-97 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

7. Workman challenging order of his dismissal dated 18-10-97 contending that he was dismissed from service without issuing any chargesheet, no notice issued to him. The allegation of workman are denied. the management submits that under the circumstances, the chargesheet could not be issued and it was not possible to hold enquiry. Management seeks permission to prove misconduct.

8. Workman filed affidavit of his evidence stating that he was dismissed from service as per 18-10-97, no chargesheet was issued to him. No enquiry was held. Reasons given in the order of dismissal about beating, assaulting Dr. Pandey are false. In his cross-examination workman says that he had no enmity with Dr. Pandey, Vice President Shri G.R. Mohan and Security Officer Shri Shekhawat. That criminal case about incident is pending against him at Baroda Branch. He denies that after death of the boy, there was large agitation. He admits that he was in Jail for about 25-27 days after the incident. He hold licence for driving heavy vehicles. After his dismissal, he is not working at other place.

9. Management filed affidavit of Dr. Pandey, Vice President G.R. Mohan, Security Officer Shri Shekhawat. Vice President G.R. Mohan is not cross-examined. All of them in their affidavits have supported the contention of management about the incident. Dr. B.L. Pandey in his evidence says that he had submitted report of the incident.. he was medically examined. The copy of the FIR and reports are produced at Exhibit M-1 to M-7. In cross-examination, he says on 30-9-97, the boy was brought to the dispensary, he was brought in time. He had referred boy to Medical College where he died. He received information about death of the boy and on the same day 7-8 persons had entered in his room. On 2nd day of death of boy, crowd had reached to his place around 8 A.M. 8-10 persons entered his room. 10-15 persons were standing outside. He was knowing those persons by face as they were coming for treatment to the hospital. That father or uncle of deceased boy were not among the assailants. He identified the assailants as they were coming for treatment in the dispensary.

10. Security Officer Shekhawat fully supported evidence of Dr. Pandey about the incident that he was abused using filthy language and assaulted by workman Ashok Shrivastava, Janardhan Tiwari, Rajendra Kumar Saxena and others. In his cross-examination, witness says that the distance between his house and office is 200 to 300 meters, the distance between office and dispensary is also same. 6-7 persons had started beating Dr. Pandey. Except him, no other persons were present. He also admits

to be correct. 30-40 persons were not concerned with the incident of beating. Beating incident occurred around 6.45 A.M. He was personally present and rescued Dr. Pandey. He did not beat any of the assailants. He was not examined by Doctor. Dr. Pandey has not suffered bone fracture. He denies that he received message on telephone from anybody about beating incident of Shri Pandey. The evidence of witness of Shri Shekhawat, Security Officer corroborates evidence of Dr. B.L. Pandey.

11. Workman had no enmity with any of those witnesses. The burden of proof in criminal case and domestic enquiry are different the evidence adduced by management is sufficient to prove that Ist party workman had participated in the incident to assault and beating of Dr. Pandey. therefore action of management dismissing workman cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

12. In the result, award is passed as under:—

- (1) Action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Ashok Shrivastav, ex-HEO, *w.e.f.* 18-10-97 is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2695.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ग्रासिम सीमेंट्स रायपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 119/99) प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-29012/161/98-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2695.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 119/99) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Grasim Cement, Raipur and their workman, which was received by the Central Government on 21/11/2013.

[No. L-29012/161/98-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/119/99

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Khushal Ram,
C/o Birbal Singh,
Plot No. 41, Adarsh Colony,
Nawalgarh Road,
Sikar (Rajasthan)

.....Workman

Versus

General Manager,
Grasim Cement,
Rawan, Tehsil Sigma,
Raipur

.....Management

AWARD

(Passed on this 19th day of September, 2013)

1. As per letter dated 3-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-29012/161/98/IR(M). The dispute under reference relates to:

"Whether the action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Khushal Ram, ex- HEO, w.e.f. 18-10-97 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were sent to the parties. Ist party, workman filed statement of claim at Page 2/1 to 2/3. Case of workman is that he was working with the IInd party. Any notice was not issued to him, any adverse remarks were not communicated to him. His services were terminated *vide* order dated 18-10-97 without holding enquiry, no chargesheet was issued. The termination without holding enquiry is illegal. The allegation made in the order of dismissal are incorrect. Management has not followed principles of natural justice. The order issued by management is in violation of provision of I.D. Act. On such ground, Ist party prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 11/1 to 11/5. It is case of IInd party that applicant was appointed on 1-4-95 as heavy equipment operator with Grasim Cement. He was dismissed *vide* order dated 18-10-97. The workman was dismissed for serious misconduct assaulting Dr. B.L. Pandey, Chief Medical Officer of Grasim Cement Factory Dispensary and Retd. Civil Surgeon from Govt. of MP. The incident created such a tensed and horrified situation that many of senior officers felt insecure and even expressed unwillingness to work. Under such circumstances it was not possible to issue chargesheet or conduct enquiry against the workman. As such he has been removed.

4. The details of the incident are narrated that on 30-9-97, Suraj Dhafedar, son of Shri Paritosh Dhafedar aged 4 to 5 years was brought to Grasim Dispensary where Dr. B.L. Pandey, Retd. Chief Medical Officer Govt. of MP CMO and Incharge was on duty. It was stated that Suraj was bitten by Scorpion. He was administered necessary medicine and discharged. After sometime, he was brought back to dispensary. Since the patient was not responding to the medicine, Dr. B.L. Pandey immediately advised patient's father to take him to Medical College Hospital, Raipur for specialized treatment. The Doctors of Raipur Medical College Hospital tried to save child but unfortunately after some time child expired early morning on 1-10-97. It is further submitted that on 1-10-97, Shri Kushal Chaudhary telephoned to Dy. General Manager that he along with other workers wants the company vehicle to bring dead body of child. Dy. General Manager directed Shri Shekhavat, Security Officer to make arrangement of one vehicle and ambulance to bring the dead body. It is alleged that at about 6.40 A.M. Dr. B.L. Pandey telephoned to Shri J.R. Mohan Vice President (P&A) that unknown persons are threatening him on telephone of death of child. After sometime; Dy. General Manager informed to Shri J.R. Mohan that some workers with intention to assault Dr. Pandey are rushing towards guest house which is situated within the factory premises. After sometime again Security Officer telephoned to Dy. General Manager and he informed him that the workers were quite annoyed and they are abusing Dr. Pandey and there was tense atmosphere. The workers are planning to assault Dr. Pandey. The Security Officer communicated all these developments to Shri Mohan, Vice-President. As soon as Shri Mohan received the messages from Dr. B.L. Pandey Shri Bhandari and Shri Sikhawat rushed towards guest house and saw that about 30 to 35 workers had gheraoed guest house and Dr. Pandey also saw that the applicant along with Ashok Shrivastava, Janardhan Tiwari, Rajendra Kumar Saxena, C.R. Nair, Ramu Sahu, Chander Shekhar Kar were dragging out Dr. B.L. Pandey by his leg from guest house. It is also submitted that applicant along with other workers were abusing Dr. Pandey in filthy language, threatening to kill him as he had killed the boy. The incident was reported by Shri Pandey to Police. The offence was registered against workman and other persons. It is submitted that workman had committed misconduct defined under Section 13(1)F of Standing Orders Act applicable to Grasim Lime Stone Mines. IInd party further submits that the chargesheet could not be issued, no enquiry could be held in the existing situation. Management seeks permission to prove the alleged misconduct on behalf of workman. For serious misconduct committed by workman, his services were terminated. Action of IInd party is legal. It is prayed that relief prayed by workman be rejected.

5. Workman filed rejoinder at Page 12/1 to 12/2 denying the contentions in Written Statement filed by IInd party and reiterating its contention in the statement of claim filed by him.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Khushal Ram, ex- HEO, <i>w.e.f.</i> 18-10-97 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

7. Workman challenging order of his dismissal dated 18-10-97 contending that he was dismissed from service without issuing any chargesheet, no notice issued to him. The allegation of workman are denied. The management submits that under the circumstances, the chargesheet could not be issued and it was not possible to hold enquiry. Management seeks permission to prove misconduct.

8. Workman filed affidavit of his evidence stating that the services were dismissed from 18-10-1978 without issuing chargesheet though notice was issued. Reasons given in order of termination about the incident of beating to Dr. Pandey is false. He has no concern with the said incident. He did not make available for his cross-examination his evidence cannot be considered.

9. Management filed affidavit of Dr. Pandey that on 30-9-97, while Dr. Pandey was on duty, a boy of 4-5 years S/o Shri Paritosh Dhafedar suffered bite of scorpion, he was treated by Dr. Pandey. Thereafter the boy was taken to Raipur Medical College for treatment where he died. Where Dr. Pandey was staying was gheraoed. Dr. Pandey was assaulted, abused and beaten. He had submitted report to Police Station. Dr. Pandey in his affidavit has stated that the assaulting workers were stopped after intervention by Shri G.R. Mohan, Vice President. That he had suffered injuries on head, left eye, back and all body parts. That Shri Kushal Ram was one of the assailants. There was no enmity with those persons. Dr. B.L. Pandey in his cross-examination contents that on 2nd day of death of boy, crowd had reached to his place around 8 A.M., 8-10 persons entered his room. 10-15 persons were standing outside. He

was knowing those persons by face as they were coming for treatment to the hospital. Criminal case prosecuted against them is pending. That he remembers names of Shri Janardhan Tiwari, Ashok Srivastava, Vishal Ram, Rama Sahu, Nair, Chandrashekhar Kar among the assailants. In para-9 of his affidavit, he has stated that workman Kushal Ram was among the assailants is not shattered in his cross-examination.

10. Workman had no enmity with any of those witnesses. The burden of proof in criminal case and domestic enquiry are different. The evidence adduced by management is sufficient to prove that Ist party workman had participated in the incident to assault and beating of Dr. Pandey. Therefore action of management dismissing workman cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

11. In the result, award is passed as under:—

- (1) Action of the management of Grasim Cement (A unit of Grasim Industries Ltd.), Rawan, Raipur in dismissing Shri Khushal Ram, ex-HEO, *w.e.f.* 8-10-97 is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2696.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एअरपोर्ट लिमिटेड/आईसीएस सिस्टम्स प्राइवेट लिमिटेड न्यू दिल्ली के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायालय नं० 1 दिल्ली के पंचाट (संदर्भ संख्यां 103/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-11012/5/2013-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2696.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi Now as show in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd., New Delhi and their workman, which was received by the Central Government on 21/11/2013.

[No. L-11012/5/2013-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DELHI****I.D. No. 103/2013**

Shri Mahanand Kumar,
313/192, Hari Singh,
Near Roshan General Store,
East Mehram Nagar,
Palam Airport,
New Delhi-110010

..... Workman

Versus

1. M/s Delhi International Airport Ltd.,
New Udan Bhawan, Terminal-III,
IGI Airport, New Delhi-110037
2. M/s ICS System Pvt. Ltd.,
B-371, Third Floor, Meera Bagh,
New Delhi-110063 Management

AWARD

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s. Delhi International Airport Ltd. (in short the management). On the Strength of the agreement, referred above, job of operation of passenger boarding bridges (in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s. ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories, Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union (in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the purpose of collective bargaining. A complaint was made to the Conciliation Officer on 02.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.02.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.03.2012 Again conciliation proceedings were initiated, which failed on 30.03.2012. Workers participated in the strike on 12.04.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of

conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11011/7/2012-IR(M), New Delhi dated 30.01.2013, with following terms:

"Whether the action of the management of M/s. ICS Systems Pvt. Ltd., New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

3. Industrial dispute, referred above, has been registered as ID No. 23/2013 and claimant union filed its claim statement on 13.03.2013. The management as well as the contractor filed their written statement, which were followed by rejoinder. Thereafter, the matter is listed for 03.10.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, *vide* order No. L-11012/5/2013-IR(M), New Delhi dated 27.06.2013 with following terms:

"Whether the action of the management of M/s Delhi International Airport Ltd. and M/s ICS System Pvt. Ltd. In terminating the service of workman, Shri Mahanand Kumar on 10.05.2012 is legal and justified? If not, what relief the workman is entitled to?"

5. It would not be out of place to mention that the name of Shri Mahanand kumar finds place at serial No. 18 of the list annexed by the Appropriate Government along with industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard Shri Amit Sharma, authorised representative of the management, besides perusal of record of the aforesaid industrial dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000(2) LLN 25] and summarized as follows:

- "1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;
3. An order made by the appropriate government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;
4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;
5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]. However, the appropriate Government under section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be allowed to be made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principal in determination of the question as to whether amendment amounts to correction of clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the

proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent power to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in Modern Foundry and Machine Systems Ltd. (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D.No. 23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd., New Delhi, in dismissing the claimant (whose name is there at serial No. 18 of the list of 36 workmen sent along with the reference order) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of Section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, along with question as to whether such action is violative of the provisions of section 33(1)(b) of the Act.

11. In the reference order, under consideration same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra vires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial dispute registered as I.D. 23/2013. The reference order is, therefore, discarded since it cannot grant jurisdiction to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 23/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : September 18, 2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

Versus

कांआ० 2697.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन आयल कारपोरेशन लिमिटेड/ए०एम० इंटरप्राइजेज न्यू दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं० 1, दिल्ली के पंचाट (संदर्भ संख्या 64/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-30011/65/2012-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2697.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd., New Delhi and their workman, which was received by the Central Government on 21/11/2013.

[No. L-30011/65/2012-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL
NO. 1, DELHI**

I.D. No 64/2013

The General Secretary,
Hindustan Engineering
& General Mazdoor Union,
D-2/24, Sultan Puri,
Delhi-110086

...Workman

1. M/s. Indian Oil Corporation Ltd.,
Delhi Bottling Plant, Ghevra Mode,
Tikri Kalan, New Delhi-110041.
2. M/s. A.M. Enterprises,
C/o M/s. Indian Oil Corporation Ltd.,
Delhi Bottling Plant, Ghevra More,
Tikri Kalan, New Delhi-110041Management

AWARD

Indian Oil Corporation Ltd. (in short the Corporation) runs a canteen at Ghevra More, Tikri Kalan, New Delhi. The Corporation awarded contract to the contractor to run the canteen, who employs his employees for the same. Employees of the contractor filed a writ petition No. 535 of 2000 for their regularization in the services of the Corporation. The said writ petition came to be disposed off by the High Court. After disposal of the said writ petition, employees of the contractor approached the Hindustan Engineering and General Nazdoor Union (In short the union), for espousal of their grievances. The union raised a dispute before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-30011/65/2012-IR(M), New Delhi dated 01.02.2013, with following terms:

"Whether the action of the management of Indian Oil Corporation Ltd., in not regularizing the services of Shri Paan Singh and 8 others (List enclosed) is legal and justified? What relief the said workmen are entitled to?"

2. Claim statement was filed by the claimants praying therein that their services may be regularized with the Corporation and they should be paid wages equal to that of the regular employees of the Corporation since the date of their joining service. Names of the claimants, on whose behalf claim statement was filed, are detailed as under:

Sl. No.	Name (S/Shri)	Father's name (S/Shri)	Working as	Joining date	Wages
1.	Pan Singh	Govind Singh	Cook	1988	6440
2.	Heera Singh	Ram Singh	Cook	1988	8112
3.	Ramdev Sharma	Mohan Sharma	Cook	1997	8112
4.	Khem Singh	Dongar Singh	Helper	1998	6440
5.	Prakash Singh	Harak Singh	Helper	1999	6440
6.	Jagdish Singh	Mohan Singh	Helper	1998	6440
7.	Faqir Singh	Malakh Singh	Helper	1998	6440
8.	Kushal Singh	Sher Singh	Helper	1998	6440
9.	Kundan Singh	Dhan Singh	Helper	2005	6440

3. Written statement was filed by the Corporation, wherein facts pleaded in the claim statement were disputed. On perusal of pleadings, issues were settled and dispute is listed for evidence of the parties for 26.09.2013.

4. During pendency of the aforesaid dispute for adjudication the appropriate Government referred the present dispute to this Tribunal for adjudication *vide* order No. L-30011/2/2013-IR(M), New Delhi dated 06.03.2013 with following terms:

"Whether the action of the management of Indian Oil Corporation Ltd., in not regularizing the services

of Shri Heera Singh and 6 others (List enclosed) is legal and justified? What relief the said workmen are entitled to?"

5. It would not be out of place to mention that the list enclosed with the reference order contains names of the claimants, whose case was referred for adjudication by the appropriate Government *vide* order dated 01.02.2013, as detailed above. Names of the claimants, who had filed their claim in response to the subsequent reference order, are detailed as follows:

Sl. No.	Name (S/Shri)	Father's name (S/Shri)	Working as	Joining date	Wages
1.	Heera Singh	Ram Singh	Cook	1988	8112
2.	Ramdev Sharma	Mohan Sharma	Cook	1997	8112
3.	Khem Singh	Dongar Singh	Helper	1998	6440
4.	Prakash Singh	Harak Singh	Helper	1999	6440
5.	Faqir Singh	Malakh Singh	Helper	1998	6440
6.	Kushal Singh	Sher Singh	Helper	1998	6440
7.	Kundan Singh	Dhan Singh	Helper	2005	6440

6. Thus, it is evident that during pendency of industrial dispute registered as I.D. No. 25/2013, present dispute has been referred for adjudication in respect of regularization of services of the claimants, whose case pends consideration. Claimants, in the present reference order, are also claimants in industrial dispute registered as ID No. 25/2013.

7. Arguments are heard at the bar. Shri Pradeep Kumar, authorized representative, assisted by the claimant, Shri Heera Singh, was heard over the matter. Shri M. Dias, authorised representative, presented facts on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:

"1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short

the Act) ruled the Apex Court in D.N. Ganguly (1958 (2) LLJ 634). However, the appropriate Government under Section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tant- mounting to suppression of the previous order of reference, cannot be allowed to be made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the questions as to whether amendment amounts to correction of clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in Modern Foundry and Machine Systems Ltd. (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D. No. 25/2013, requires this Tribunal to adjudicate as to "Whether the action of the management of Indian Oil Corporation Ltd., in not regularizing the services of Shri Paan Singh and 8 others (List enclosed) is legal and justified.

11. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether "Whether the action of the management of Indian Oil Corporation Ltd., in not regularizing the services of Shri Paan Singh and 8 others (List enclosed) is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, alongwith question as to whether such action is Violative of the provisions of section 33(1)(b) of the Act.

12. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra virus of the powers of the appropriate Government.

13. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial dispute registered as I.D. No. 25/2013. The reference order is, therefore, discarded, since it can not grant jurisdiction to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 25/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 03-09-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

कांआ 2698.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस० एन० सुंदरसन (मिनरल्स) लिमिटेड सतना के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 164/2003) प्रकाशित करती है, जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-29012/81/2003-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2698.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 164/2003) of the Central Government Industrial Tribunal/Labour Court Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. S.N. Sunderson (Minerals) Ltd., Satna and their workmen, which was received by the Central Government on 21/11/2013.

[No. L-29012/81/2003-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/164/2003

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Bharat Bhushan
S/O Shri Shankar Mishra
Gram Pahadi,
PO Pahadi, Vdhaya Maher,
Zila Satna (MP)

....Workman

Versus

M/s. S.N. Sunderson (Minerals) Ltd.
PO Maihar, Distt. Satna (M.P.)

.... Management

AWARD

(Passed on this 7th day of October, 2013)

1. As per letter dated 1-10-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-29012/81/2003-IR(M). The dispute under reference relates to:

"Whether the action of the management of M/s. S.N. Sunderson (Minerals) Ltd. Maihar in terminating the services of Shri Bharat Bhushan S/o Shri Shankar Lal Mishra is justified? If not, to what relief the concerned workman is entitled and from which date?

2. After receiving reference, notices were issued to the parties. Ist party workman filed Statement of claim at page 4/1 to 4/4. Case of Ist party workman is that he was posted as Mining Superior since May 1991. He was working with devotion. He was transferred time to time. Till 9-2-02, he was working on said post. Wages was paid to him. Provident Fund deducted from his wages were not paid, he was not paid bonus for two years, minimum wages were not paid to him. He was working as Gumasta/superior in the mines proclaim machine. He was working at the places where said machine was taken for the work on 25-1-2000. Proclaim machine was not in order. Said machines was taken to Head work Shop, Maihar. He was accommodating with driver Srinath Kewat. When machine was at Kalia Mines, Bhatura, theft of hydrolic oil was committed, some oil was found lying. It is submitted that the resignation for forcibly obtained form him under the threats of reporting incident to Police by Shri B.L. Nanda, General Manager. Under the fear of criminal proceeding, he had signed on the letter of resignation. It was misused by the IInd party and his services were terminated illegally. On such grounds, Ist party prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 6/1 to 6/2 opposing claim of Ist party. It is submitted that the claim of Ist party is false based on false allegation. Workman is

praying salary, bonus etc. He is also claiming reinstatement in service. That after receiving notice from ALC, Jabalpur, the reply was filed on 18-9-2000. That remedy for Ist party workman was by appeal provided under Certified Standing Orders. That workman was involved in serious charges of theft of Hydrolic oil from Bhatura mines on 26-1-2000. He apprehended that departmental/criminal proceedings may be initiated against him and therefore he voluntarily tenders resignation on 10-2-2000. Since the workman submitted resignation, IInd party did not take any steps. The resignation was accepted. Salary for the working days was paid. Workman had not submitted any objection before acceptance of the resignation as said Ist party workman after submitting resignation was in gainful employment with Goenka Lime Stone Mines. That the Ist party was substituted by another employee, no post is vacant. On such ground, IInd party prays for rejection of claim of workman.

Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------|
| (i) Whether the action of the management of M/s S.N. Sunderson (Minerals) Ltd. Maihar in terminating the services of Shri Bharat Bhushan S/o Shri Shankar Lal Mishra is legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. Ist party workman is challenging termination from service by IInd party contending that resignation was forcibly obtained under the threats initiating criminal proceedings about theft of Hydrolic Oil. IInd party management denied allegation of workman. Affidavit of evidence of workman is filed covering material contention in this statement of claim. That his services were terminated without notice on 9-2-2000. That proclaim machine on which he was working was suffering from defects. That on 26-1-2000, he came to know that theft of Hydrolic oil was committed and the said information was submitted to Mechanical Foreman Shri Das on 27-1-2000. That his signature was obtained by force on the letter of resignation. In his cross-machine was committed on 26-1-2000 at Bhatura mines. He denies the suggestion that the machine and its part were under his supervision. Again the workman says that he had knowledge about the theft of Hydrolic Oil was committed and report was submitted to the police. He denies that he voluntarily submitted resignation. His signature was obtained on some paper. He denies suggestion that he voluntarily submitted resignation on 10-2-2000. The resignation letter was not referred to the workman. Original resignation letter is not produced on record.

6. Management's witness Shri S.P. Tiwari filed affidavit of his evidence stating that theft of Hydraulic Oil was committed on 26-1-2000. IInd party was to submit report to the police about the said incident. That on 10-2-2000 because of family problems, workman submitted resignation his resignation was accepted. The workman had filed proceeding under Section 33(C) (2) for recovery of salary on 20-12-2001. Said proceeding was rejected by Labour Court on 1-10-06. That workman is working at Goenka Lime Stone Mines. In his cross-examination, management's witness says that the resignation written on the paper is in his handwriting. Any chargesheet was not issued to the workman. The resignation of workman was forwarded to Head Office. He had not accepted resignation of workman. IInd party has not produced resignation submitted by workman, who had accepted said resignation is not known. Zerox copy of resignation is produced on record. The reasons are shown that out of family problems, workman had submitted resignation. At the time of argument, learned counsel for workman Shri Arvind Soni pointed out my attention that the signature of workman is below his name and not above the name. To be precise, the resignation submitted by workman is not proved by IInd party. Workman was not served with any notice, no retrenchment compensation was paid to him. Termination of his services is illegal for violation of Section 25-F of I.D. Act. Therefore I record my finding in Point No. 1 in Negative.

7. Point No. 2 — In view of my finding in Point No. 1, termination of service of workman is illegal. Question arises to what relief he is entitled? The evidence of workman is silent about his occupation. In evidence of IInd party, it is stated that workman is working at Goenka Lime Stone Mines. The evidence of management's witness on said point is not challenged in his cross-examination. Considering above aspects, the workman cannot be granted back wages. It would be appropriate to allow relief of reinstatement of workman without back wages. Accordingly I record my finding in Point No. 2.

In the result, award is passed as under:—

- (1) Action of the management of M/s S.N. Sunderson (Minerals) Ltd. Maihar in terminating the services of Shri Bharat Bhushan S/o Shri Shankar Lal Mishra is not legal.
- (2) IInd party is directed to reinstate workman without back wages.
- (3) Ist party workman is allowed cost of Rs. 2000/-

R.B. PATLE, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2013

का०आ० 2699.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली इंटरनेशनल

एयरपोर्ट लिमिटेड/आईसीएस सिस्टम्स प्राइवेट लिमिटेड, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, दिल्ली के पंचाट (संदर्भ संख्या 80/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/11/2013 को प्राप्त हुआ था।

[सं० एल-11011/7/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2013

S.O. 2699.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s Delhi International Airport Ltd., New Delhi and their workmen, which was received by the Central Government on 21/11/2013.

[No. L-11011/7/2012-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DELHI

I.D. No. 80/2013

Shri Mukesh Babu, S/o Shri Bhagirath,
R/o RZF-417, Raj Nagar,
Part-II, Palam Colony,
New Delhi-110045

.....Workmen

Versus

1. M/s Delhi International Airport Ltd.,
New Uddan Bhawan, Terminal-III,
IGI Airport, New Delhi-110037
2. M/s ICS System Pvt. Ltd.,
B-371, Third Floor, Meera Bagh,
New Delhi-110063

.....Management

AWARD

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s. Delhi International Airport Ltd. (in short the management). On the strength of the agreement, referred above, job of operation of passenger boarding bridges (in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s. ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories.

Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the purpose of collective bargaining. A complaint was made to the Conciliation Officer on 2.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.2.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.3.2012. Again conciliation proceedings were initiated, which failed on 30.3.2012. Workers participated in the strike on 12.4.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11011/7/2012-IR(M), New Delhi dated 30.1.2013, with following terms:

"Whether the action of the management of M/s. ICS Systems Pvt. Ltd., New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.5.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

3. Industrial dispute, referred above, has been registered as ID No. 23/2013 and claimant union filed its claim statement on 13.3.2013. The management as well as the contractor also filed their written statement, which were followed by rejoinder. Thereafter, the matter is listed for 19.8.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, *vide* order No. L-11012/2/2013-IR(M), New Delhi dated 12.04.2013 with following terms:

"Whether the action of the management of ICS System Pvt. Ltd. in dismissing the workman, Shri Mukesh Babu, S/o Shri Bhagirath, with effect from 10.05.2012 is legal and justified? What relief the workman is entitled to?"

5. It would not be out of place to mention that the name of Shri Mukesh Babu finds place at serial No. 3 of the list annexed by the appropriate Government alongwith industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present

dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard the claimant as well as Shri Amit Kumar, authorised representative of the management, besides perusal of record of the aforesaid industrial dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:

- "1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;
2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;
3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;
4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;
5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]. However, the appropriate Government under section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to

supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference can not go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be allowed to be made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the question as to whether amendment amounts to correction of clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in *Modern Foundry and Machine Systems Ltd.* (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D. No. 23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd. New Delhi, in dismissing the claimant (whose name is there at serial No. 19 of the list of 36 workmen sent along with the reference order) from service with effect from 10.5.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and Justifiability of the dismissal order, along with question as to whether such action is violative of the provisions of section 33(1)(b) of the Act.

11. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which

was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra vires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial dispute registered as I.D. No. 23/2013. The reference order is, therefore, discarded, since it cannot grant jurisdiction to this Tribunal to adjudicate it. The Tribunal as seized of I.D. No. 23/2013, which would be adjudicated in due course. An Award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2013

का०आ० 2700.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंधु बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (36/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/21/2008-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd December, 2013

S.O. 2700.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab & Sind Bank and their workmen, received by the Central Government on 02/12/2013.

[No. L-12012/21/2008-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 36/2008

Sri Balram Bhushan,
C/o Sri Indra Bhushan,
54, Krishna Nagar,
Near Sanatan Dharm Mandir,
Mathura.

AND

The Chairman-cum-Managing Director,
Punjab & Sindh Bank,
Corporate Head Office,
21, Rajendra Place,
New Delhi.

AWARD

1. Central Government, MoI, New Delhi, *vide* notification No. L-12012/21/2008 IR(B-II) dated 15.05.2008 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of Punjab & Sindh Bank *i.e.* Chairman-cum-Managing Director, Punjab & Sindh Bank, New Delhi & Zonal Manager, Punjab & Sindh Bank, Lucknow in terminating Sri Balram Bhushan, Sub-Staff Punjab National Bank, Vijay Park Branch, Mathura from the service with effect from 22.12.2006 is legal and justified? If not to what relief the workman is entitled?

3. Brief facts are:

4. It is stated by the workmen that the opposite party Punjab & Sindh Bank had opened its extension counter on 22.9.97 Dampair Nagar, Mathura. In due course of the time and having regard to the increase business of the extension counter the opposite party converted the extension counter into a full-fledged branch know as Vijay Park on 07.03.2006 and since then said branch is working as independent Branch. It is alleged by the workman that he was engaged by the opposite party bank as a peon with effect from 22.09.97 *i.e.* the date when the extension counter of the bank was opened at Vijay Park Mathura Cantt. It is further stated by the workman that the post of peon at the said branch was of a regular and permanent nature. It is alleged by the workman that except the workman no other person was engaged as a peon-cum-messenger during the period 22.09.97 (the opening day of extension counter) till 22.12.2006 *i.e.* the date of termination of his services at the branch. The workman during the period of his engagement with the opposite party bank was neither a casual labour nor a daily wager nor had been engaged to clear the casual work of the opposite party bank not connected with regular and permanent work of the bank as has been claimed by the opposite party bank in their legal reply dated 30.05.2007 sent by Sri Gautam Kumar Advocate in response to legal notice of the workman dated 3rd May, 2007. It is also stated by the workman that it would not be out of place to mention here that under the industrial jurisprudence a casual or daily rated employee/worker means such workman/employee whose services were engaged for short spells on temporary basis to clear out the work of casual nature not connected with regular or permanent nature of work of the industrial establishment.

5. It is further stated by the workman that his long continues association and continuous working with the

bank during the period 22.09.97 to 22.12.06 cannot be said to be either casual employment or employment as a daily rated employee of the bank as the workman was never engaged by the opposite party bank to clear out the casual nature of work of the bank not connected with regular and permanent nature of work of the bank. Further it is beyond imagination that a regular and permanent nature of work continuing for years together can be termed to be a casual work as has been claimed by the opposite party bank in the legal reply dated 30.05.2007. The work performed by the workman in the bank was of very sensitive nature related with financial transaction which cannot be allowed to be performed either by an outsider or by a casual or daily employee engaged from open market under any circumstances. It is also stated by the workman that it was the obligation and duty of the opposite party bank to have ensured appointment of peon-cum-messenger for their extension counter on regular and permanent basis after holding regular selection process by notifying the post or by calling the names of eligible candidates from the local employment exchange as the case may be but at any rate it was not open for the bank to have extracted the work of regular and permanent peon-cum-messenger for years together from the applicant workman on payment of meager amount of Rs. 75 per day dehorning the regular selection process of recruitment rules of the bank.

6. The action of the opposite party bank in not making payment to the workmen at the minimum of scale wages is against relevant rules of bank as well as against the principle of natural justice as the work performed by the workman during the period he remained in the employment of the bank cannot be separated or discriminated from the work of regular and permanent nature of work of a peon-cum-messenger. As such the workman is also entitled for difference of wages between paid and payable amount at scale rate during the period 22.09.97 to 22.12.2006 as he had performed the regular and permanent nature of work of the post of peon-cum-messenger at banks above said branch.

7. The method and procedure adopted by the bank in the case of the workman has been well recognized as an unfair labour practice as has been defined under section 2(ra) of Industrial Disputes Act, 1947 and amounts to Begar as has been defined under article 23 of the Constitution of India which clearly envisages forced labour for which no wages are paid off or if some payment is paid it is grossly inadequate. As such the payment of wages made to the workman by the bank from time to time during the period of his employment was grossly inadequate as compared with the wages of regular and permanent employee of the opposite party of the bank working as peon-cum-messenger. Thus it fully attracts the provisions of article 23 of Constitution of India.

8. At the time when the workman was engaged by the bank the working of the extension counter was manually

which in due course of time switched over to computer working. The business of the extension counter increased gradually and it had become quite impossible for the in-charge of the extension counter to cope up the work of the branch and to finish the same day by closing hours of business. Having regard to the increased business working of the extension counter the In-charge incumbent started taking work from the workman of writing day book, work of saving and current account, work of loan department, work of preparation of FDR, Pay Orders and Demand Drafts which were prepared by the workman during the period of his employment in his own hand writing.

9. It is further stated by the workman that he is oblivious of the fact that by discharging the above work in the branch of the bank he cannot be treated to be at par either to the post of cashier or peon-cum-messenger of the branch unless he is subjected to regular selection process according to recruitment rules. It is further claimed by the workman that it is also a settled legal position that the labour courts or industrial tribunals should not be used as measure for providing back door entry in public employment which is open for all citizens of the country and as per constitution mandate equal opportunity is required to be given to all citizens in the matter of public employment. But at the same time it also equally true that the provisions of Industrial Disputes Act, 1947 cannot be ignored which protects the right of such workman who has rendered more than 240 days of continuous service within the meaning of section 25B of the Act, in a calendar year under any industrial establishment covered under the provisions of I.D. Act, where engagement or employment of the workman is permissible under law and can be made even without holding due selection process without offering any appointment letter in writing or where the service of the workman has been disengaged or terminated orally or without order in writing. In such cases labour courts and industrial tribunal are fully competent to examine judiciously the action of the management if challenged under the provisions of the Act.

10. The continuous working of the workman has been admitted by the opposite party bank in their legal reply dated 30.05.2007. The workman never entered in to any agreement in writing during the peiord of his employment with the opposite party bank. He remained in the employment for rendering his services on contract basis. As such the provisions of section 2(oo)(bb) of the Act are not applicable in the case of the workman. The opposite party without there being any sufficient cause terminated the service of the workman with effect from 22.12.2006. Neither the workman was offered any notice, notice pay or retrenchment compensation at the time of his termination, therefore, the termination of the services of the workman by the bank is in violation of the provisions of 25F of the Act, coupled with Rule 76 of ID (Central) Rules, 1957.

11. It is also alleged that the workman during the period of his employment and considering the nature of work performed by him he was a temporary employee of the bank as given under para 20.7 of Bipartite Settlement dated 19.10.66 and being so he was entitled for 15 days notice or notice pay before termination of his service as per para 516 of Shastri Award. It is also submitted by the workman that he was not provided with an opportunity of reemployment by the bank while inducting new recruits at various branches of the bank. As such the bank has also breached the provisions of Section 25H of the Act.

12. In view of above it is alleged by the claimant that at any rate the action of the bank in terminating the service of the workman with effect from 22.12.2006 cannot be held either just or fair and the same is in violation of the provisions of Section 25F, 25G and 25H of the Act as well as the same is also in breach of para 516 of Sashty Award, therefore, the whole action of the bank is bad in law being in breach of principles of natural justice.

13. Lastly it is prayed by the workman that his termination from the service with effect from 22.12.2006 be held illegal and unjustified and the opposite party bank be directed to allow the workman to perform his duties in the same capacity which was occupied by him on 22.12.2006, to enable him to have a chance to face regular selection process as and when it took place. The bank be further directed to pay him full back wages & continuity of service.

14. Bank has filed their written statement refuting the claim of the workman. It has been alleged that there is a prescribed procedure for recruiting sub-staff personnel in this way the claimant had never been appointed or recruited through prescribed procedure; therefore, there is no question of terminating his services. It has been averred that the claimant has been engaged on daily rated basis for fetching water and to supply the same to the customers of the branch as well as employees of the bank and he was paid on a daily basis. Therefore, the claimant is not entitled to any relief. It is also stated that there was no legal requirement to make payment of notice pay and retrenchment compensation as his engaged in the bank was itself illegal.

15. Both the parties have filed the documentary as well as oral evidence.

16. Claimant has filed paper no. 17/2-3 which is a reply to the notice.

17. Opposite party has filed 23 documents *vide* list 21/1 and 24 documents *vide* list 20/1.

18. Claimant has adduced himself as W.W. 1 as Balram Bhushan. Opposite party has adduced M.W. 1 Sri Bachhoo Singh who is manager in the bank.

19. I have heard the arguments at length and perused the whole record.

20. It is a case where the engagement by the opposite party of the workman has not been denied. Workman has filed reply to the legal notice which was given by the opposite party to the workman which is paper no. 17/2-3. In this reply the opposite party has clearly admitted that the workman had been engaged as an additional hand looking to the additional work in the branch of the bank. But it has been stated that the workman himself has abandoned his engagement, therefore, the opposite party has clearly admitted the engagement as well as the period of employment of the workman with effect from 22.09.1997 to 22.12.2006.

21. The short question to be decided is whether the workman had himself abandoned the service voluntarily or he was terminated by the opposite party without any cause. On this point I have examined the oral as well as documentary evidence. M.W. 1 has nowhere specifically stated in his statement that the workman has voluntarily abandoned the service with effect from 22.12.2006.

22. I have examined the statement of W.W. 1. He specifically stated on oath that the bank used to take the work from him right from the opening of the branch till the bank is closed. He has stated on oath that in addition to the supply of the water he use to make entries in the official records of the bank like clearing register no. 22. There are entries in his hand writing at page no. 100. He also stated that there are several entries in his hand writing in the token book. There are entries in the local clearing cheque register in his hand writing. There are several registers which have been filed by the opposite party and produced in the tribunal and examined by me wherein the workman has specifically stated that there are several entries in his hand writing. I have examined these registers. It is also stated that when he was removed from the service he specifically issued a legal notice to the opposite party and the opposite party had replied the same *vide* paper no. 17/2-3. The workman has specifically stated that when he was removed he was not issued any notice, for the removal he was not given any retrenchment compensation or notice pay.

23. Therefore there is sufficient evidence oral as well as documentary that the workman was engaged from 22.09.1997 and he was removed on 22.12.2006 without issuing any notice, or notice pay or retrenchment compensation or without any sufficient cause.

24. There is sufficient evidence that the work of a clerk type was also taken from in emergencies.

25. Therefore, the evidence adduced by W.W. 1 inspires confidence. Nothing has come out in his cross-examination which makes his statement unbelievable.

26. I have examined the evidence M.W. 1. He himself admitted in his cross that he does not have full knowledge personally as well as from the records. He has also not read

the pleadings of the parties. When he was put questions regarding the entries in the concerned registers which have been produced by the opposite party he did not deny the hand writing whether it belongs to the workman or not. But he showed his ignorance.

27. Therefore, in such circumstances the opposite party cannot take any benefit of the evidence adduced by M.W. 1.

28. Therefore, I have considered all the facts, and circumstances of the case. I am of the view that the workman was engaged by the opposite party but he was removed without any sufficient cause or legal notice which is required under the provisions of the Industrial Disputes Act, 1947.

29. The A.R. of the opposite party has prayed that in case if it is found that the workman has completed 240 days or more then considering the facts it may be permitted that the workman may be allowed compensation. Whereas A.R. of the workman pleaded that there is a long engagement by the opposite party and there was no delay on the part of the workman in raising the dispute.

30. I have thoroughly heard on this point and have examined the evidence. I am of the view that the workman should be reinstated in such circumstances in the service of the bank.

31. Accordingly it is held that the workman is entitled for his reinstatement in the service of the bank, therefore, the reference is decided in favour of the workman and against the opposite party.

32. Reference is answered accordingly.

Dated : 11-10-2013

RAM PARKASH, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

कांआ 2701.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद 1, के पंचाट (98/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं एल-12011/85/2006-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

S.O. 2701.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 98/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial

dispute between the management of UCO Bank, Patna and their workmen, received by the Central Government on 03.12.2013.

[No. L-12011/85/2006-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

LOK ADALAT

In the matter of
a reference U/S 10(1)(D)(2A) of I.D. Act, 1947.

Ref. No. 98 of 2006

Employers in relation to the management of UCO Bank,
Patna.

AND

Their workmen.

PRESENT: SRI RANJAN KUMAR SARAN,
Presiding Officer

APPEARANCES:

For the Employers : None

For the Workman : None

State : Jharkhand Industry : Coal.

Dated 26.9.2013

AWARD

By Order No. L-12011/85/2006-IR(B-II), dated 25.10.2006, the Central Government in the Ministry of Labour has, in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of UCO Bank in not regularizing the services of Md. Maiuddin in i/3rd Scale wages of part time sweeper in subordinate cadre who claims to have been working for more than 15 years as part time sweeper at UCO Bank Sabaipatti Branch, Muzaffarpur is legal and or justified? If not what relief Mohd Maiuddin is entitled to?"

2. After receipt of the reference, both parties are noticed, Sponsoring Union files a petition stating that the concerned workman is already appointed in the bank as per Bipartite settlement between both parties, disputes resolved. Hence "No dispute" award is passed communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

का०आ० 2702.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलोर के पंचाट (03/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं एल-12011/137/2006-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

S.O. 2702.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 03/2008 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12011/137/2006-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 10th October, 2013

PRESENT : Shri S.N. NAVALGUND,
Presiding Officer

C R No. 03/2008

I Party

The General Secretary,
Bank of Baroda Employees
Union. C/o Bank of Baroda,
Post Bag No. 2, K. G. Road,
Bangalore-560 009

II Party

The Assistant General
Manager, Bank of Baroda,
R O (Karnataka), 3rd Floor,
HJS Chambers, No. 26,
Richmond Road,
Bangalore-560 025.

APPEARANCES:

I Party : Muralidhara,
Advocate

II Party : Shri Ramesh Upadhyay,
Advocate

AWARD

1. The Central Government vide order No. L-12011/137/2006-IR(B-II) dated 05.02.2008 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of Bank of Baroda in terminating the services of Shri Parameshwarappa, a temporary peon w.e.f. 29.7.2003 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference registering it in CR 03/2008 when notices were issued to the I Party and the II Party they entered their appearance through their respective advocates and filed their claim and counter statement respectively.

3. In the claim statement filed by the I Party it is claimed that Sh. Parameshwarappa joined the services of the II Party as temporary peon on 07.03.1994 at Share Processing Cell, Siddaiah Road Branch of the II Party and after the reduction of work load at Share Processing Cell he continued his service in the same branch as a Peon and in the year 2002 on a complaint of fraud misappropriation by some of the employees wherein he was also implicated and the CBI after 18 months investigation filed charge sheet before XXI additional City and Civil Judge (Special) judge, Bangalore (CC No. 115/2004) without including his name in the list of accused and during the investigation of that complaint he was transferred to Bijapur Branch on 29.10.2002 and abruptly the Branch Manager of the Bijapur Branch instructed him not to attend the work from 29.07.2003. It is further alleged on representation by Sh. Parameshwarappa (I Party Union) took up the matter before the management before which Sh. Parameshwarappa had also made several representations seeking restoration of his job but the management since did not respond it constrained to take up the issue for intervention before the RLC (C), Bangalore through petition dated 31.07.2003 which due to unreasonable and untenable objections by the management ended in failure it resulted in this reference. It is further alleged the I Party Union which is recognized union in the Bank had raised demand before the labour authorities for absorption of casual/temporary employees working in the bank for a long period and appreciating the same the bank entered into a memorandum of settlement dated 11.9.2000 and that All India Bank of Baroda Employees Federation at the Apex Level also entered into settlement on 18.03.2008 to absorb all the temporary employees like sweepers, casuals in the bank and the action of the II Party refusing employment to Parameshwarappa w.e.f. 29.07.2003 amounts to termination of service which is unjust, arbitrary and illegal and in violation of the provisions of Section 25(f) of the ID Act as such he is entitled for restoration/reinstatement into service with full backwages, continuity of service and all other consequential benefits including his absorption.

4. The II Party in its counter statement contended that since at no point of time it appointed Sh. Parameshwarappa as Temporary Peon there exists no relation of employer and workman between them as such

the present dispute referred for adjudication is outside the purview of Industrial Dispute as defined in Section 2(k) of Industrial Dispute Act is liable to be rejected. It is further contended the II Party bank being a state within the ambit and scope of the constitution of India and is subject to government guidelines having set procedure and rules and regulations for recruitment of sub-staff either on permanent or temporary basis, in the order of reference it has already been decided the existence of employer and employee relationship which is incorrect. In the counter statement further denying each and every allegation in the claim statement putting the I Party to strict proof it is prayed for rejection of the reference.

5. After completion of the pleadings when the matter was posted for evidence the learned advocate while filling the affidavit of Sh. Thyagarajan, Senior Manager in the office of the II Party Bank swearing to the facts of the counter statement examined him on oath as MW 1 and closed his side. Inter alia, the learned advocate appearing for the I Party while filling the affidavit of K. Parameshwarappa for whose cause the I Party Union raised this dispute examining him on oath as WW 1 got exhibited Photostat copies of letter addressed by Chief Manager, Siddaiah Road Branch to Assistant General Manager dated 07.06.1996 as a reply to his letter dated 03.05.1996 mentioning his date of birth as 01.06.1976, Education Qualificational as 8th Std. and he having worked at Share Processing Cell from March 1994 and at that branch from May 1994 onwards; letter addressed by Assistant General Manager to the General Manager informing the details of work taken from Parameshwarappa dated 02.07.1996; letter addressed by acting Chief Manager, Siddaiah Road to the General Manager having not engaged any person on daily basis except K Parameshwarappa in that branch dated 22.01.1997; General Certificate issued by Siddaiah Road Branch of the II Party Sh. K Parameshwarappa working in that branch having maintained SB Account 5907 and his residential address being 9/14, First floor, Hind Main, 6th Cross, Govindaraj Nagar, Bangalore-560040; letter addressed by Branch Manager, Bijapur to the Assistant General Manager informing that K. Parameshwarappa, Temporary sub-staff having reported to that branch on dated 13.11.2002 details of K. Parameshwarappa furnished by Assistant General Manager to the Senior Branch Manager, Siddaiah Road; the details of the work taken from I Party informed by Siddaiah Road Branch Manager to the Assistant General Manager dated 05.10.2000; letter addressed by Branch Manager, Bijapur Branch to Assistant General Manager informing K. Parameshwarappa working as temporary peon in that branch from 13.11.2002; letter addressed by Branch Manager, Siddaiah Road Branch to the Head Office of the II Party regarding details of the work taken from K. Parameshwarappa; 20 vouchers regarding payment received by K. Parameshwarappa towards wages; certified copy of the FIR issued by CBI Police Station, Bangalore

dated 31.03.2003; Charge Sheet submitted by the CBI on 28.05.2004; Petition filed by the I Party Union to the RLC for conciliation; the reply given on behalf of the II Party to the RLC; FOC report submitted by the RLC; the extract of SB Account of K. Parameshwarappa with Siddaiah Road Branch wherein his wages are credited as Ex W-1 to Ex W-16 respectively. The learned advocate appearing for the I Party also while filing the affidavit of the President of the I Party Union examining him on oath as WW 2 in his evidence got exhibited copies of the minutes of the joint discussion held on 17.07.1995 held before ALC(C), Bangalore; Photostat copy of the letter of Corporate General Manager (HRM&DA) of II Party addressed to General Secretary dated 05.09.1995; memorandum of settlement dated 19.09.2000; covering letter received from DGM and Information Officer dated 09.11.2001 with four documents received along with letter; Photostat copy of the tripartite settlement between BOB and All India BOBEU with circular dated 24.03.2008 as Ex W-17 to Ex W-25 respectively.

6. With the above pleadings, the oral and documentary evidence brought on record by both the sides, the arguments addressed by the learned advocates appearing for both the sides were heard.

7. The learned advocate appearing for the I Party while taking my through the evidence brought on record submitted that the evidence do suggest that K Parameshwarappa worked as Temporary sub-staff from 07.03.1994 continuously and on an internal investigation in the month of October 2002 some fraud being found out the CBI was moved for investigation wherein the I Party was also being implicated he was transferred to Bijapur Branch during that month and the Branch Manager of that branch abruptly instructed him not to come to the work the II Party having continuously taken work from him for about 10 years it could not have sent him abruptly in that fashion without notice and payment of compensation as contemplated under Section 25(F) as such it amounts to illegal termination and he is entitle for restoration of his service and that though in the claim statement it is stated he is entitle for absorption as well there is no scope to consider the same in this reference being out side the scope of schedule of the reference. In support of his arguments he cited the decisions reported in :

1. 2010 II LLJ 277 - Harijinder Singh v/s Punjab State Warehousing Corporation.
2. 2010 III LLJ 1 SC - Anoop Sharma v/s Executive Engineer, Public Health Division No. 1, Panipat (Haryana).

8. Inter alia, the learned advocate appearing for the II Party urged that the Branch Manager of Siddaiah Road Branch, Bangalore and Bijapur Branch may have taken work from K Parameshwarappa on need basis and same was being on daily wages it ended for the day for which he was

engaged there is no termination of service at all and that Branch Managers being not competent to appoint the sub-staff they engaging the I Party on daily wages is of no consequence, therefore only because the I Party worked between 1991 to 2002 it does not create the relationship of employee and employer relationship between him and the II Party as such he is not entitled for any relief. In support of his arguments he cited the following decisions:

1. (2013) 2 Supreme Court Cases 751 - Rajkumar vs. Jalagaon Municipal Corporation
2. (2013) 5 Supreme Court Cases 136 - Assistant Engineer, Rajasthan Development Corporation vs. Gitam Singh
3. Unreported judgement of State of Uttar Pradesh & others Vs. Ajay Kumar; Supreme Court
4. Unreported judgement of Haryana Development Authority vs. Om Pal; Supreme Court
5. Unreported judgement of Hindustan Aeronautics vs. Ban Bahadur Singh & others; Supreme Court
6. Unreported judgement of Manager (Now Regional Director) RBI vs. Gopinath Sharma and another.

9. Since the reference schedule is 'whether the action of the management in terminating the service of Shri K. Parameshwarappa, a temporary peon w.e.f. 29.7.2003 is legal and justified and whether he is entitled to there is no scope either to claim Sh. K. Parmeshwarappa being the regular sub-staff or for his absorption and as fairly conceded by the learned advocate appearing for the I Party though it is casually stated in the prayer column of the claim statement his entitlement being for absorption he is not entitle for the same, the only point that arises for my consideration are whether (i) K. Parameshwarappa was a workman as defined under Section 2(s) of the ID Act? and (ii) if yes, whether he has been terminated without complying the mandatory provisions of Section 25(f) of the Act entitling him an order of reinstatement?

10. On appreciation of the pleadings, oral and documentary evidence with arguments put forward by the learned advocates, my finding on the above point are in the Affirmative for the following :

REASONS

11. At the outset, I may say that having regard to the voluminous evidence placed on record by the I Party through correspondence between the Branch Managers and the Head Office the learned advocate appearing for the II Party could not deny the claim of the I Party K. Parameshwarappa having worked as Temporary Sub-staff initially at Siddaiah Road Branch from March 1994 till October 2002 and from 13.11.2002 till 28.07.2003 at Bijapur Branch as such he only urged that such services might have been availed by the Branch Managers who were not

competent to appoint as such it does not create the relationship of employee and employer between K. Parameshwarappa and the II Party as such the I Party has no locus standi to raise dispute on his behalf. The learned advocate appearing for the II Party failed to point out any provision the recruitment rules of the bank relating to the regular sub-staff also apply for appointment of temporary sub-staff. When the Branch Managers avail the services on daily wages and make them payment it cannot be said that it is engagement in their personal capacity or without the knowledge of the Head Office. Moreover, in the present case there being correspondence between the Branch Managers and Head Office with regard to availing the service of K. Parameshwarappa on his claim for absorption, the argument that there is no relationship of employee and employer between K. Parameshwarappa and II Party is devoid of any merits. As per definition of workman under Section 2(s) of the ID Act any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied is a workman and as provided under Section 25 (B)

"a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or a strike which is no illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under the an employer—

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in the mine; and
 - (ii) one hundred and twenty days, in any other case".

Section 25(f) comes into play which provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until he has been given one months notice in writing indicating the reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of notice and compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months, Section 2(s), 25B and Section 25(f) have to be read together to come to a conclusion whether there existed a relationship of employee and employer and such employee has been illegally terminated. As already adverted to by me above the correspondence between the branch managers and the head office produced by the I Party since discloses that since March 1994 till October 2002 K. Parameshwarappa having continuously worked at Siddaiah Road Branch and later from 13.11.2002 till 28.07.2003 at Bijapur Branch of the II Party there cannot be any dispute K. Parameshwarappa having continuously worked for more than a period of one year. It was argued by the learned advocate appearing for the II Party that there is no termination of service as such of the service of K. Parameshwarappa but the evidence do suggest that on 13.11.2002 he did report at Bijapur Branch and same was communicated by the Branch Manager of that branch to the Assistant General Manager on the same day the copy of which is produced at Ex W-5. If at all K. Parameshwarappa was not asked to report at Bijapur Branch and on his own he had went there and secured the work there would not have been any occasion for the Branch Manager of that Branch to write a letter to the Assistant General Manager informing that he has reported in that Branch on that particular day. The evidence of K. Parameshwarappa/WW 1 that the Bijapur Branch Manager abruptly instructed him not to attend the work from 29.07.2003 being not rebutted by examining the then Branch Manager or even denied in his cross-examination there is no reason to disbelieve his version that he was abruptly asked to not to attend the bank at Bijapur from 29.07.2003. As adverted to by the learned advocate appearing for the I Party in the reply given by the Bank to the conciliation petition since it is stated that in view of his involvement in the fraud case there is no question of continuing his services even on daily wage basis is sufficient to say that his service has been terminated as claimed by his from 29.07.2003. Since as already adverted to by me above as fairly conceded by the learned advocate appearing for the I Party there is no scope in this reference to consider absorption of the I Party in the service of the II Party bank and the only scope whether termination of his temporary service is legal and justified all the citations referred to by the learned advocate appearing for the II Party where the claim of the regularisation are discussed have no relevancy and having regard to the long standing service of K. Parameshwarappa over a period of 10 years and promptly raising dispute

immediately it is also not a case to compensate him by compensation as held in the case of Rajkumar, Appellant vs. Jalgoan Municipal Corporation reported in (2013) 2 Supreme Court Cases 751 relied upon by the learned advocate appearing for the II Party, he is entitled for restoration/reinstatement in the temporary service in which he was working. In the result, while arriving at conclusion of answering the Point No. (i) and (ii) in the Affirmative, I pass the following :

ORDER

The reference is allowed holding that the Action of the Management of Bank of Baroda in terminating the services of Sh. K. Parameshwarappa, Temporary peon w.e.f. 29.07.2003 is not legal and justified and that he is entitled for restoration/reinstatement in that service w.e.f. the date of the termination i.e. 29.07.2003. He is not entitled for the claim of backwages and benefit of absorption that is requested for in the claim statement.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

का०आ० 2703.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, धनबाद के पंचाट (109/2000) प्रकाशित करती है जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं० एल-12012/279/1999-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

S.O. 2703.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 109/2000) of the Central Government Industrial Tribunal/Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/279/1999-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Reference: No. 109/2000

In the matter of reference U/s 10(1)(d)(2A) of
I. D. Act, 1947

Parties: Employer in relation to the management of
Bank of India, Patna

AND

Their workmen

PRESENT: Sri R.K. Saran, Presiding Officer

APPEARANCES:

For the Employers : Shri D.K. Verma, Advocate

For the Workman : None

State : Jharkhand

Industry : Banking

Dated, the 30/10/2013

AWARD

By order No. L-12012/279/99-IR (B-II) dated 15.02.2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the claim of Shri Ram Ayodhya Prasad that he has put in 240 days continuous service in any consecutive 12 calendar month with the management of Bank of India during the period from 18th April, 1991 to 17th December, 1998 is justified? If so, whether the action of the management in terminating the service of Shri Ram Ayodhya Prasad w.e.f 18th Dec. 98 is justified and legal? If not, what relief the workman is entitled to?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

का०आ० 2704.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 2, मुंबई के पंचाट (के०स० औ०आ० 2/12-2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/12/2013 को प्राप्त हुआ था।

[सं० एल-12011/143/2004-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2704.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/12 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 05/12/2013.

[No. L-12011/143/2004-IR (B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, MUMBAI**

PRESENT : K. B. KATAKE, Presiding Officer

Reference No. CGIT-2/12 of 2005

Employers in Relation to the Management of
Bank of India

The General Manager (P)
Bank of India
Mumbai South Zone
BoI Building
70/80, M.G. Road, Fort
Mumbai-400 023

AND

Their Workmen
The General Secretary
Bank of India Staff Union
BoI Building
70/80, M.G. Road, Fort
Mumbai-400 023

APPEARANCES:

For the Employer : Mr. L.L. D'Souza,
Representative

For the Workman : Mr. M.B. Anchan,
Advocate

Mumbai, dated the 27th August, 2013

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/143/2004-IR (B-II), dated 09.11.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Bank of India, Mumbai South Zone, Mumbai in dismissing the services of Shri Narendra H. Sawant. w.e.f. 30/6/2001 is justified? If not, what relief the workman Shri Narendra H. Sawant is entitled to?"

2. On receipt of the reference, notices were issued to both the parties. In response to the notice, second Party

workman filed his statement of claim at Ex-5. According to the second Party workman he was employee of the Bank. He had served for about 12 years prior to his dismissal. According to him Thane Rural Police arrested him on suspicion, therefore he could not attend his duty from 15/6/2000 to 11/12/2000. He could not inform the Bank as he was in jail. His wife tried to inform the Bank. When he resumed his duty after 11/12/2000, they charge-sheeted him for unauthorised absence from 15/6/2000 to 11/12/2000. They also charge-sheeted him for committing dacoity/robbery on a Truck on 4/2/2000 and he was arrested by Police and kept behind bars and he did not report the serious fact to the Bank. The incident was published in newspaper Times of India dt. 3/7/2000. It caused irreparable damage to the reputation and image of the Bank. The Inquiry Officer did not consider the fact that the workman was acquitted by the Sessions Court in the said criminal case. The Inquiry Officer also failed to consider the fact that mere arrest on suspicion was not sufficient to sentence the workman. The Inquiry Officer violated the principles of natural justice while conducting the inquiry. The Inquiry Officer did not consider the fact that the workman was on duty on 4/2/2000 i.e. on the date of alleged incident. The Inquiry Officer failed to consider the fact that news and photographs published in the newspaper in respect of arrest was not sufficient to terminate the service of the workman. The inquiry was not fair and proper. The findings of the Inquiry Officer are not based on the evidence on record. They are perverse. The punishment of termination of service imposed is illegal. The appeal of the workman came to be dismissed. Therefore workman raised industrial dispute. As conciliation failed, on report of ALC (C), the Labour Ministry has sent the reference to this Tribunal. The workman herein prays that the order of dismissal passed by the disciplinary authority dt. 30/6/2001 be quashed and set aside and the first Party be directed to reinstate the workman with all back-wages, allowances etc. alongwith continuity in service and seniority.

3. The first Party resisted the statement of claim vide its written statement at Ex-6. According to them the workman remained unauthorisedly absent from duty from 13/6/2000 to 11/12/2000 without any intimation to the Bank. Bank had sent him communication directing him to resume duties but workman failed to report his duties. Neither he had informed or given any cogent reasons for his absence. He remained absent till 11/12/2000. Therefore it amounts to gross misconduct in terms of clause 19.5 (p) of 6th Bi-Partite settlement.

4. The workman was arrested by Thane Rural Police on 19/6/2000 for allegedly having looted a truck on 4/2/2000. He remained in police custody. The news thereof was flashed in newspaper Times of India dt. 3/7/2000. The said news caused irreparable damage to the reputation and image of the Bank. It amount to gross misconduct in terms of clause 19/5 (j) of 1st Bi-partite settlement dt. 19/10/1966.

5. The workman was charge-sheeted for both these charges. Mr. Salunkhe was appointed as Inquiry Officer.

The order was communicated to the workman. The workman was represented by his defence representative. His defence representative cross examined all the witnesses. Alongwith charge-sheet list of documents and list of witnesses was supplied to the workman. The workman was given an opportunity to lead his evidence. After considering the evidence on record the Inquiry Officer submitted his report to the disciplinary authority. Disciplinary Authority issued him show cause notice alongwith the copy of the report. After considering his reply the disciplinary authority in the light of seriousness of charges passed the order of dismissal without notice. In the inquiry sufficient opportunity was given to the workman. He participated in the inquiry proceeding. All the witnesses were examined in his presence. They were cross examined by defence representative of the workman. Opportunity was also given to the workman to lead his evidence. There was no violation of principles of natural justice. The inquiry was fair and proper. The findings of the Inquiry Officer are based on evidence on record. They are not perverse. Therefore the first Party prays that the reference be rejected with cost.

6. The second Party filed his rejoinder at Ex-9. He denied the contents in the written statement and reiterated the contentions made in the statement of claim.

7. Following are the preliminary issues framed by my Ld. Predecessor for my determination I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry is fair and proper?	Yes
2.	Whether the findings of the IO are perverse?	No

REASONS

Issue No. 1

8. In the case at hand according to the first Party the charge-sheet was served on the workman. The Inquiry Officer has explained the charges. The workman was represented by Defence Representative of his choice. All the witnesses were examined in presence of the workman and they were cross examined by his defence representative. Opportunity was also given to the workman to lead his evidence. After conclusion of evidence of both the parties Inquiry Officer heard arguments and submitted his inquiry report to the Disciplinary Authority. Disciplinary Authority sent the copy of report to the workman alongwith show-cause notice and after giving him hearing the disciplinary authority has passed the order of termination. In the circumstances the Ld. adv. for the first Party submitted that the inquiry was fair and proper. In this respect I would also like to point out that the second Party has not pointed out any defect in the inquiry proceeding. On the point Apex Court ruling can be resorted to *Sur Enamel and Stamping Works Ltd. V/s. Their Workmen 1963 II LLJ 367* wherein the Hon'ble Apex Court laid down the following conditions for fair and proper domestic inquiry. They are:

- (1) The employee proceeded against has been informed clearly of the charges leveled against him.
- (2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges
- (3) The employee is given a fair opportunity to cross examine witnesses.
- (4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and
- (5) The inquiry officer records his findings with reasons for the same in his report.

9. In the light of guidelines of the Apex Court in the inquiry herein all the points given above were complied with. The inquiry was conducted in presence of the workman. Copies of all the documents were given to him. He was given opportunity to cross examine the witnesses he was also given an opportunity to examine himself and lead his evidence. He was given full opportunity to defend himself. It was vaguely contended that, the inquiry officer has violated the principles of natural justice. However no specific instance was given or pleaded as to how the IO has violated the principles of natural justice. On the other hand from the above referred facts it is clear that the Inquiry Officer has given full and sufficient opportunity to the workman to defend himself. There was no violation of principles of natural justice. In the circumstances I come to the conclusion that the inquiry was fair and proper. Accordingly I decide this Issue No. 1 in the affirmative.

Issue No. 2

10. In respect of the findings of the Inquiry Officer it is vaguely contended that they are perverse. However details thereof are not given as to how they are perverse. On the other hand the findings of the IO are found to be in consonance with the evidence on record. He examined the witnesses in presence of the workman and his defence representative. They were thoroughly cross examined by the defence representative of the workman. The evidence on record indicates the guilt of the workman. In this respect I would like to point out that the Id. adv. for the second Party mainly relied upon the fact that the workman was acquitted by the Sessions Court, Palghar in the case of dacoity. However the inquiry herein was not in respect of the same incident of dacoity. On the other hand the inquiry herein was in respect of unauthorised absence for about six months and not giving any intimation to the Bank in respect of his arrest in such a serious offence. It caused irreparable damage to the reputation of the Bank. The fact is not disputed that the workman was absent since 13/06/2000 to 11/12/2000. It is also not disputed that neither the workman had applied for leave nor he had given any intimation to the Bank in respect of his arrest and that he was kept behind bars for about six months. His absence for the aforesaid period was no doubt unauthorized absence. Therefore the finding to that effect arrived at by the Inquiry Officer cannot be called perverse.

11. The second charge was the workman was arrested in a serious offence of dacoity. He did not inform the Bank about his arrest and the news thereof was published in newspaper causing irreparable damage to the reputation and image of the Bank. In this respect I would like to point out that this fact is also not disputed that the workman was arrested by Police in a case of dacoity and he did not inform it to the Bank. The fact is also not disputed that news in respect of arrest of the workman the employee of the Bank was published in newspaper and the workman remained in jail for more than five months. This, no doubt caused harm to the reputation of the Bank and the IO has arrived at the right conclusion to that effect. There was no charge that the workman has committed dacoity or any other offence. Though charge would have been framed to that effect, the law on the point is well settled that in criminal trial the charge is required to be proved beyond reasonable doubts whereas in the domestic inquiry standard of proof is not that high as like in criminal trials and preponderance of probability would have sufficed the purpose. Though the workman was acquitted in the criminal trial it need not affect the verdict of the Inquiry Officer as the charges framed against the workman in the domestic inquiry were altogether different than the charges in the criminal trial. Therefore the acquittal has no consequence on the findings of the Inquiry Officer.

12. The findings of the Inquiry Officer which are based on the evidence on record and consistent thereto thus the findings cannot be called perverse. In this respect I would also like to point out that, the Tribunal is not sitting as an appellate court to scrutinize the findings which are prima facie based on the evidence on record. On the point Apex Court ruling can be resorted to in US State Road Transport Corporation & Ors V/s. Musais Ram & Ors. 1999 (83) FLR 226 (SC) wherein on the point Hon'ble Court observed that;

"The Court does not sit in appeal over the findings of the Inquiry Officer. If the findings are based on uncontroverted material placed before the IO, it cannot be said that these findings are perverse."

13. In short the findings of the Inquiry Officer in case at hand are based on evidence before him. They are not contrary to the evidence on record and cannot be called perverse. Thus I hold that the findings of the Inquiry Officer are not perverse. Accordingly I decide this Issue No. 2 in the negative and proceed to pass the following order:

ORDER

- (i) The inquiry is held fair and proper.
- (ii) Findings of the Inquiry Officer are not perverse.
- (iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Dated: 27/08/2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

का०आ० 2705.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड इन्शुरेन्स कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 81/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/12/2013 को प्राप्त हुआ था।

[सं० एल-17012/12/94-आईआर (बी-II)]

रवि कुमार अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2705.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/94) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of United India Insurance Co. Ltd., and their workmen, received by the Central Government on 05/12/2013.

[No. L-17012/12/1994-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT TRIBUNAL- CUM-LABOUR COURT, JABALPUR

No. CGIT/IC/R/81/94

PRESIDING OFFICER: SHRIR.B. PATLE

Secretary,

Madhya Pradesh General Insurance Employees

Association,

M-1/8, Amber complex ,

Zone-I, M.P. Nagar,

Bhopal

...Workman/Union

Versus

Zonal Manager,

United India Insurance Co. Ltd.

Z-7, Zone-I,

M.P. Nagar, Bhopal

...Management

AWARD

(Passed on this 24th day of September, 2013)

1. As per letter dated 13.6.94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-17012/12/94-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of United India Insurance Co. Ltd., Bhopal in terminating the services of Shri Purshottam Kumar Malviya, temporary sub staff w.e.f. 23.4.93 is justified? If not, what relief is the said workman entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/5. Case of Ist Party workman is that he was appointed as temporary employee for supplying drinking water as per oral orders of the Branch Manager. He has required to supply drinking water to the employees. He was discharged from duties from 23.4.93. He was paid consolidated amount Rs. 100 per month. Said amount was increased to Rs. 200, 300 per month. However he was compelled to accept Rs. 150 per month by the IInd Party. That the duty discharged by him are of permanent nature. He should have been regularized on the post of peon. He had submitted different representations. His request was not considered. He was threatened if he approaches Authority or Court of law, he has to face its consequences. That termination of his service in violation of provisions of I.D. Act is illegal. On such ground, workman prays for setting aside oral termination and consequential benefits be allowed to him.

3. IInd party filed Written Statement at Page 4/1 to 4/3 denying claim of the workman. It is submitted that the IInd party is a Government Company owned by General Insurance Company. Statement of claim signed by General Secretary of Employees Association without verification by the workman. That the employees appointed by IInd party as permanent, temporary, casual employees. The claim of Ist party workman is not tenable as he was temporarily engaged by the Branch Manager in September 1991. Workman was paid wages only for supplying drinking water. His services were availed paying the amount. The workman was not engaged as part time sweeper. As per company rules, only for cleaning jobs before office hours and after office hours, part time sweeper is permissible. The workman is not covered under I.D. Act being casual employee. On such grounds, IInd party claim for rejection of the claim of workman.

4. Ist party filed rejoinder at Page 5/1 to 5/4 reiterating his contentions in the statement of claim. The contentions in Written Statement filed by IInd party are alleged to be imaginary. That required patten for appointment of part time sweeper was adopted. The Branch Manager in violation of the rules resorted for appointment for permanent job. It is malafide.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|----------------|
| (i) Whether the action of the management of United India Insurance Co. Ltd., Bhopal in terminating the services of Shri Purshottam Kumar Malviya, temporary sub staff w.e.f. 23.4.93 is legal? | In Affirmative |
|--|----------------|

- | | |
|---|---------------------------------------|
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |
|---|---------------------------------------|

REASONS

6. Workman is challenging termination of his services in violation of Section 25-F of I.D. Act. he filed affidavit of his evidence. He says that he was appointed as temporary employee for supply of drinking water for officers and staff at Itarsi office by order dated 1.9.91. He was required to supply drinking water. He was paid remuneration Rs. 100 per month which was increased to Rs. 200, 300 per month. That the services were terminated without notice. He was not paid compensation. In his cross-examination, workman says the office in which he was working is at Ist floor, he was fetching water from the tap at ground level. He was fetching water 5 days in a week. He was paid Rs. 50, sometimes Rs. 100 per month. He denies that he was working on part time basis, he admits that there was one regular peon working in the office. He was paid under voucher for the water supplied by him. The affidavit of evidence of workman is silent that he was continuously working or he completed 240 days continuous service during the period 1.9.91 to 20.4.94. From evidence of workman, Annexure submitted alongwith affidavit about working days and amount paid to him is not proved by him. The workman has not uttered anything about the contents of the Annexure.

7. Management filed affidavit of evidence of Shri R.N. Prasad denying that the workman orally appointed by him or he had given any kind of assurance to him for regularization. In his cross-examination, management's witness says that drinking water was purchased at price of Rs. 5 per mud vessel (mutka). Normally 6-7 mud vessels (mutka) drinking water was required every day. The amount was paid to him. The suggestion is denied that when regular employee was proceeding on leave, workman was required to clean furniture and do other incidental works. No suggestion is found to the management's witness that workman had completed 240 days continuous service. Considering the evidence on record, it is difficult to hold that the workman has completed 240 days continuous service, he is not covered as workman under Section 25-B of I.D. Act. Therefore he is not entitled to protection under Section 25-F of I.D. Act. The termination of services of workman cannot be said illegal. For above reasons I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) Action of the management of United India Insurance Co. Ltd., Bhopal in terminating the services of Shri Purshottam Kumar Malviya, temporary sub staff w.e.f. 23.4.93 is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

का०आ० 2706.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (33/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/12/2013 को प्राप्त हुआ था।

[सं० एल-12011/191/2000-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2706.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 33/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the management of Indian Bank, and their workmen, received by the Central Government on 05/12/2013.

[No. L-12011/191/2000-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 23rd September, 2013

PRESENT: K. P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 33/2010

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. Indian Bank and their workmen)

BETWEEN

The General Secretary : Petitioner/Ist Party
Indian Bank Employees Association
No. 17, Ameerjan Street, Choolaimedu
Chennai-600001

AND

The General Manager : Respondent/2nd Party
Indian Bank, Zonal Office,
No. 24/2, Ethiraj Salai,
Chennai-600008

APPEARANCE:

For the Ist party/Petitioner: Sri G. Gopal, Gen. Secy.,
Authorized Representative

For the Ist Party/
Management: M/s. T.S. Gopalan & Co.,
Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12011/191/2000-IR(B-II) dated 18.08.2010 referred the following Industrial Dispute to this Tribunal for adjudication. The schedule mentioned in that order is:

"Whether the claim of the Indian Bank Employees Association for regularization of Smt. R. Meena, Temporary Part Time Sweeper is legal and justified? If not, what relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 33/2010 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. On entering appearance the First party has filed the claim statement in justification of its claim for regularization of one Meena who is a Temporary Part Time Sweeper, working in Anagaputhur branch of the Second Party Bank. As seen from the Claim Statement the First Party Union has raised ID with Asstt. Labour Commissioner (Central) seeking regularization of the services of Meena. The conciliation proceedings ended in failure as the Management was not willing for the same. The Government of India had declined to refer the dispute for adjudication. So the Union had approached the Hon'ble High Court of Madras and had obtained a favourable order. It is accordingly the reference was made by the Government.

4. According to the First Party Meena had been employed as Temporary Part Time Sweeper in Anagaputhur branch of the Indian Bank in the leave vacancy of the Permanent Part Time Sweeper of the Bank from the year 1990. After the Temporary Part Time Sweeper was transferred to another Branch in December 1996 the Management had brought two more persons as Part Time Sweepers and have given work to all three of them on rotational basis to deny the post of Permanent Part Time Sweeper to Meena. According to the First Party, the Second Party Management did not follow terms of its own settlement signed with the recognized union. The settlement provides for engagement of Part Time Sweeper in permanent vacancy that have come into being after 28.07.1993, which is the date of settlement. According to the First Party, as per the Bipartite Settlement governing the service conditions of the Bank employees the temporary workman is to be given preference for filling permanent vacancies. According to it, in view of the settlement entered into between the Management and the employees, Meena is eligible to be absorbed as Part Time Sweeper. It is also stated by the First Party that Meena on whose behalf this ID is raised is hailing from a very poor family and is a member of the Scheduled Caste Community and that she was being exploited by the Bank. According to the First Party the Second Party is to be directed to regularize the services of Meena.

5. The Second Party has filed a counter statement denying the allegations made in the Claim Statement. According to the Second Party, Part Time Sweepers used to be recruited from the local area and regularized in the same branch as and when vacancies are notified. Whenever a new branch is opened a person from the local area would be engaged to do the sweeping and cleaning of the branch on casual basis. She would be paid wages daily and this would be included in the Cash Book of the branch. Their names will not be there in the rolls of the establishment. They are only casual sweepers and are not employed in the services of the Bank. Periodically the Bank used to issue circular notifying vacancies to be filled and inviting proposals from the concerned branches for regularization of the existing casual sweepers as regular Part Time sweepers provided they are sponsored by the Employment Exchange. It is admitted by the Second Party that there was a Bipartite Settlement on 28.07.1983 regarding the manner in which Part Time sweepers are to be selected. According to the Second Party employment opportunities in the Bank should be available to all the eligible candidates. No one should gain employment with the Bank by way of backdoor entry. According to the Second Party the concerned sweeper Meena was initially engaged as Casual Part Time Sweeper during the leave vacancy of Permanent Part Time Sweeper. Her name was not sponsored by the Employment Exchange and therefore her engagement as a casual part time sweeper did not give her any scope for regularization. It is also stated by the Second Party that after the Permanent Part Time Sweeper was transferred two more part time casual sweepers were engaged. According to the Second Party, in the years 1997, 1998 and 1999 Meena had worked only less than 100 days. It is stated by the Second Party that the concerned sweeper continues to be engaged as a Casual Part Time Sweeper even now. It is stated by the Second Party that if the vacancy of the Part Time Sweeper in Anagaputhur branch is to be filled candidates will have to be called from Employment Exchange and in that case Meena would lose even her job as a Casual Part Time Sweeper. It is also stated by the Second Party that by the settlement dated 28.07.1993 the union has agreed that if engagement of casual sweeper was done they would not demand their regularization as Permanent Part Time Sweeper. According to the Second Party Meena who has started as a casual worker with wages of Rs. 35 per day in 1996 in now paid Rs. 100 per day as wages. According to it, there is no justification in the demand of the First Party for regularization of Meena as a Permanent Part Time Sweeper.

6. The points to be considered are:

- (i) whether the claim of the 1st Party for regularization of the concerned employee is justifiable?
- (ii) To what relief she is entitled to?

7. The evidence in the case consists of oral evidence of the concerned employee examined as WW1 and the

documents marked as Exs. W1 to Ex. W7. No evidence either oral or documentary was adduced on the side of the Second Party.

Points (i) and (ii)

8. If could be seen from the Claim Statement and the Counter Statement filed in the case that much of the facts are not in dispute. Admittedly Smt. Meena on whose behalf the dispute is raised by the First Party had been working as a Casual Employee in the Anagaputhur branch of the Second Party Bank from 1996. She had been rendering her services to the Bank in this position and still continues to do so. In spite of her working in the Bank for more than 20 years her position has not changed. She remains to be a casual labourer with the Bank.

9. It is clear from the counter statement of the Second Party that Meena was working in the Bank as casual employee whenever the permanent part time sweeper in the branch was on leave. She continued to be the only person to replace the permanent part time worker on her leave days. This permanent Part Time Worker seems to have been transferred to another branch in 1996. It is alleged by the First Party that two more persons were brought in at the Anagaputhur branch of the Bank as Part Time Sweepers after transfer of the Permanent Part Time Sweeper only to see that Meena is not regularized in the post. In the Claim Statement the First party has reproduced a part of the deed of settlement signed between the Management of the Bank and the workmen on 28.07.1993. This runs as follows:

In order to avoid future disputes in the matter of engagement of part time sweepers, the following course of action has been agreed upon. In case of retirement/promotion/re-designation of a part time sweeper, the branch/office should take up the matter at least 6 months in advance of the date of retirement of the concerned part time sweeper, with the employment exchange. The process of selection should be expeditiously completed and ensure that the selected candidate is appointed in time so that he or she can take over on retirement of the existing part time sweeper.

10. The demand of the First Party is that in view of the above settlement Meena is entitled to regularization as permanent part time sweeper in her post. However, it is pointed out by the Second Party that as per the settlement the post of part time sweeper is to be filled through the Employment Exchange. The demand of the First Party is that since the Management has not taken any steps to fill the vacancy through Employment Exchange, Meena who had been working as a casual labourer for several years continuously should be given the post of Permanent Part Time Sweeper. It is pointed out by the counsel for the Second Party that merely because she has been working in the bank for several years, she is not entitled for

regularization. He has pointed out that if this is done it will be very much against the settlement entered into between the Management and the Workmen. It is further pointed out by the counsel it is not a case of Meena having been working in the bank on all days. Though she was there on all these years she was working on rotational basis.

11. The evidence given by the concerned worker Meena as WW1 gives details regarding her work. During her Chief Examination she has stated that from 1990-1996 she had worked continuously in Anagaputhur branch as Temporary Part Time Sweeper. During that period she was paid Rs. 35 per day only. After 1996 the branch head engaged two more persons to do the same work. She has stated that she continues to work in the same branch and that she is now getting Rs. 110 a day as wages. The case of the Second Party that she is working on rotational basis is admitted by her, during her cross-examination. She has stated that there are two more sweepers at Anagaputhur branch and that they are all attending the work of the branch on rotation.

She has stated that the other two used to work for three days in the week. Herself and her daughter will work for the other three days. She stated that whenever she is on leave her daughter used to do the work. After the death of her daughter, her husband is doing the work, whenever she is on leave. She admitted that since herself and the other two sweepers were working alternately as Temporary Part Time Sweepers there was no opportunity for her to work for more than 100 days in any year between 1997 and 1999.

12. It could be seen from the claim of the First Party that it is demanding regularization of WW1 only on the basis that she had been working in the Bank from 1990 onwards, though only on the days when the Permanent Part Time Sweeper was on leave from 1990 to 1996, and subsequently only on rotation basis along with two others. It is argued on behalf of the Second Party that this claim of the First Party has no justification in view of the very settlement entered into between the Bank and the Workmen. It is pointed out by the counsel that as per the terms of settlement, in case of retirement, promotion or re-designation of the Part Time Sweeper the branch has to take up the matter six months in advance of the concerned date, with the employment exchange. The concerned worker has stated during her examination that she has never registered with the Employment Exchange. When a vacancy has arisen at the concerned branch the Branch was to send for an employment exchange candidate the filling up the vacancy. According to the counsel it was only because the Bank has not done so the concerned worker continues in the particular branch as Temporary Part Time Sweeper. The Second Party has stated in the counter statement that the union has agreed not to demand regularization of persons

engaged on casual basis as Permanent Part Time Sweeper, in view of the above settlement to have the vacancies filled up through Employment Exchange. The concerned worker having not registered with Employment Exchange there was no question of her getting a permanent post in the Bank. In fact the demand of the First Party is against the terms of settlement entered into with the Bank. I find that the worker Meena is not entitled to regularization as claimed by the First Party.

13. It is a fact that Meena has been working as Temporary part Time Sweeper in Anagaputhur branch for more than 20 years. At the initial stage she was given 35 per day as wages. Now this has been increased to Rs. 110 a day. This is a paltry amount when the present cost of living is taken into account. This will be too little if the salary drawn even by a permanent part time sweeper of lesser service is taken into account also. Even if she is working as a temporary hand she should be entitled to equal wages in par with the permanent employees, though she would not be eligible to the benefits to which the permanent employee would be entitled. It seems standardized the parameters in the determination of the wages for the Part Time Sweepers *vide* guidelines given through its circulars. As seen from this the wages payable to the Part Time Sweeper are to be determined on twin parameters with floor space area to be cleaned in terms of sq.ft. and total working hours per week. Neither the First Party nor the Second Party has stated anything about the floor space area to be cleaned. However, there is the evidence given by the worker that on days of work she will be working for 3-4 hours.

14. As per the 9th Bipartite Settlement on Wages and other service conditions the subordinate staff at the initial stage will be drawing Rs. 5,850 as Pay *w.e.f.* 1st May, 2010. In that case the pay that will be available for a permanent staff for a day would be almost Rs. 200 alongwith other benefits. The concerned worker who is working for about 4 hours on days of work is getting a fixed amount of Rs. 110. The nature of work done by the concerned worker is the same as that of a permanent staff. Though a temporary worker she should have equal pay along with the permanent staff, even if without other benefits. Considering all these into account wages payable to the concerned worker per day is fixed as Rs. 175.

15. The second party is hereby directed to pay wages to the concerned worker @ Rs. 175 per day, on days of work, with effect from 18.08.2010.

16. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd September, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Smt. R. Meena

For the 2nd Party/Management : None

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ex.W1	18.01.1999	Letter 107/98-2000 to Asstt. Labour Commissioner (Chennai) by the Petitioner Union raising the Industrial Dispute for regularization of the services of Smt. Meena.
Ex.W2	14.03.2000	Reply letter to ALC (Chennai) by the Respondent.
Ex.W3	13.06.2000	Rejoinder by the Petitioner Union.
Ex.W4	14.07.2000	Reply of the Respondent.
Ex.W5	26.07.2000	Failure Report by the Asstt. Labour Commissioner (Chennai).
Ex.W6	24.01.2001	Impugned Order by Government of India, Ministry of Labour & Employment.
Ex.W7	30.03.2010	Order by Madras High Court on the Writ Petition WP 14924 of 2001 filed by the Petitioner Union.

On the Management's side

Ex. No.	Date	Description
		Nil.

नई दिल्ली, 5 दिसम्बर, 2013

का०आ० 2707.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (343/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/12/2013 को प्राप्त हुआ था।

[सं० एल-12011/91/2000-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2707.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 343/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of United Bank of India and their workmen, received by the Central Government on 05/12/2013.

[No.L-12011/91/2000-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

PRESENT:

Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 10th September, 2013

Reference: (CGITA) No. 343 of 2004**Reference I.T.C. 106 of 2000 (Old)**

The Chief Regional Manager,
United Bank of India,
Western Region,
5th Floor, 25 Sir Phiroz Shah Mehta Road,
Mumbai-400001 ... First Party

Versus.

The Joint Secretary,
United Bank of India,
Shramik Karmachari Samity,
C/o UBI, Manekchowk Branch,
Manekchawk,
Ahmedabad (Gujarat)-380001 ... Second Party

For the First Party : Shri K.V. Gadhia, Advocate

Shri Yogi K. Gadhia, Advocate

For the Second Party : Experte

AWARD

The Central Government/Ministry of Labour, New Delhi by its Order No. L-12011/91/2000/IR(B-II) dated 29/09/2000 referred the dispute for adjudication to Industrial Tribunal, Ahmedabad (Gujarat) under the terms of reference:

SCHEDULE

"Whether the demand of United Bank of India Shramik Karmachari Samity that while depositing the 500/- notes bundles with the Head cashier of the branch by the cash receiving clerk the Head cashier who is also required to check the notes of 500/- bundles should also bear some responsibility in accordance with the H.O. circular No. Gt/CC and Allied matters/4/Om No. 71/132/96 dated 10.05.1996 in the matter of shortage, defectives, forged note etc. is legal and justified? If not, what relief is the affected workman entitled to?"

2. As per statement of claim Ext. 41 relevant para 4(1) of Head office circular reproduced by the 2nd party as follows Remittance of cash from the branches to a CCRC

(Centralised Cash Remittance Centre) or from CCRC to other branches of our bank will be accepted by ring counting only except 500 Rupees. Note after-satisfying that the seal is intact, stamp of the concerned branch and name and signature of the cash clerk are appearing/legible on the label (Note Slips) of the Note packets 4(ii) "Accordingly Head Cashier of the branch should also accept cash from receiving cash clerks by ring counting only except 500 rupees note." 4(iv) chest branches are further advised to recount non issuable note packets piece by piece before depositing notes to RBI to avoid any discrepancy in future "The above circular of H.O. filed as Annexure-A. Further case is that as per H.O. clarification where there is no currency chest, the CCRC branches having A/c with R.B.I., S.B.I. and the provisions of para 4(iv) will equally apply" as per item No. of record of proceedings of the meeting held on 20.11.1998 between CRM, Western Region and 2nd part Union. Further case is that in Ahmedabad station/ Gujarat united Bank of India is not having chest branch but Ahmedabad main branch is CCRC. As per circular 4 (i), 4 (ii), and 4 (iv) recounting of 500 Rupees note packet piece by piece by another cashier (who has not first prepared and signed) and recounting of non-issuable note packets piece by piece by cashier of chest/CCRC branch impliedly entails putting of their signature on such note packets. Further case made out is that as there is no existing circular issued by Head office of the Bank regarding sharing of responsibility among the two cashiers in the matter of shortage, forged note/defective note found subsequently in a packet signed by two cashier demand through Unions agenda dated 17.07.1998 was raised before chief Regional Manager, Western Region but the decision of the CRM-H.O. circular dated 15.05.1996 nowhere suggests that a cash slip is signed by two cashiers. Hence sharing of responsibility does not arise. Dispute was raised before the conciliation officer and on failure report the appropriate Govt. sent for adjudication on the dispute as per above terms of reference. The Union has sought for the reliefs (a) the Bank Management should be directed to ensure the recounted of the note packets must put his signature on the packets recounted by him as per existing and future Head Office circular. (b) Bank management to frame a policy as to who will be and to what extent responsible for defective note/forged note/shortage detected in a packet recounted and signed by two cashiers in consultation with S.B.I. or R.B.I. where all note packets are signed by the two persons and they are acting as Bankers' Bank and Central Bank of the country and any other relief to which union is found entitled and with cost.

3. As against this the case of the 1st party Bank as per written statement (Ext. 9) is that the reference is

misconceived and not an industrial dispute as per seat 2K of the I.D. Act, 1947, because the referred dispute in the instant proceedings is concerned with the operational guideline/instructions issued by the Bank is consonance with the instructor/directives of the Reserve Bank of India in the matters of day to day operations of currency chest and CCRC at the designated branches of the bank and cannot be termed as "industrial dispute". The Bank's union has no locus stand in the matter with respect to para 1 to 7 of the S/c those are matter of record and facts and union to prove those matters by producing relevant records with reference to para 8 and 9 of the S/c, it is submitted that the bank, by circular No. GT/Certified Copy/16/OM-120/132-2003 dated 12th June, 2003 which was sent to all the branches/officers of Bank, had vide revised instructions for preparation of note packets and handling of currency chest for implementation of clean note policy of the Reserve Bank of India as per Annexure-A of w.s. are now prevailing having guidelines and instruction at para 10.1 to 10.34 in details. It is submitted that the detailed guidelines/instructions issued by the Reserve Bank are required to be adhered to and followed by the Bank. The disputant Union has not brought out any case of prejudice caused to any of its members by the operating guidelines in question of the Bank entailing it to any relief. So the claim of disputant union is fit to be closed at this stage without proceeding in this case and the 2nd party union is not entitled to any relief and the reference is fit to be dismissed with cost.

4. As per pleadings and rival contention of the parties the following points are taken for determination:

POINTS

- (i) Whether the reference is maintainable?
- (ii) Whether the disputant Union (2nd party) has been able to bring out any case of prejudice caused to any of its member by the operating guide line in question Bank's circular No. GT/CC & Accused matter /4/OM No. 71/132/96 dated 10.05.1996.
- (iii) Whether the subsequent revised circular of United Bank of India No. GT CCT/6/OM-120/132-2003 dated 12.06.2003 as per guidelines/instruction issued by Reserve Bank of India and duly circulated by the United Bank of India has settle all the matters for having no any grievances to the disputant Union (2nd party)?
- (iv) What orders to be passed?

5. **Points No. ii and iii:**—The disputant Union could not have been able to bring out any case of prejudice caused to any of its member bank employee by the operating guidelines in question dated 10.05.1996 in the

matter of shortage, defective forged note etc. The statement of claim was filed on 20.11.2000. Thereafter, Shri A. R. Shah, Regional Secretary and Joint General Secretary of United Bank of India Shramik Karmachari Samity by the letter dated 02.04.2009 on the letter head of the union informed to the Industrial Tribunal, Ahmedabad that he being office bearer cannot remain present in the hearing and he also cannot afford to engage a lawyer to represent the union and so on the material of record Ex parte order on the merits of the case may be passed. Thereafter the disputant Union not represent this case in support of statement of claim. In the meantime 1st party Bank submitted its written statement on 29.07.2010. Pleading therein that the previous Bank's circular dated 10.05.1996 in non-est after coming in to operation of new revised circular dated 12.06.2003.

6. It has been argued on behalf of the 1st party that no prejudice has been cause to the disputant Banker's Union (2nd party) even when the circular dated 10.05.1996 was in operation and since after operation of revised circular dated 12.06.2003 produced with list at Ext. 12. Now this reference does not survive and has become infructuous and that the relief No. (a) and (b) as per S/c of disputant union have been meted out by the revised circular dated 12.06.2003.

7. On perusal of the previous circular dated 10.05.1996 *vis-a-vis* revised circular dated 12.06.2003 (Ext. 12/1) I find that all the matters have been settled by revised circular and so there remains no any grievance to the disputant Union (2nd party). So, point No. ii is answered against the 2nd party and point No. iii is answered in favour of the 1st party Bank.

8. **Point No. i**—In view of the above findings to point No. ii and iii, this reference case is not maintainable since there remains no industrial dispute to be adjudicated as per terms of reference with respect to previous circular dated 10.05.1996 after circulation of revised circular dated 12.06.2003.

9. **Point No. iv**—The reference having no merit is dismissed. No. Order as to cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

का०आ० 2708.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1444/2004) प्रकाशित को करती है जो केन्द्रीय सरकार को 05.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/30/2003-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2708.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1444/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 05/12/2013.

[No.L-12012/30/2003-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT:

Binay Kumar Sinha,

Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad,

Dated 14th August, 2013

Reference: (CGITA) No. 1444 of 2004

1. The Zonal Manager
Bank of India,
Office Bhadra, Ahmedabad
2. The Branch Manager,
Bank of India,
Shahibaug Branch,
Ahmedabad

...First Party

AND

Their Workman

Mahendra Dalpatbhai Solanki

50, Chandralok Society,

Opp. Rami ni Chali,

Rakhiyal, Ahmedabad-380023

...Second Party

For the first party: Smt. Meenaben Shah, Advocate

For the second party: Shri Y.S. Pathan, Advocate

AWARD

As per Order No./L-12012/30/2003-IR(B-II), New Delhi, dated 21.06.2004, the Central Government/Ministry of Labour under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the I.D. Act, 1947 referred the dispute for adjudication in terms of reference under the schedule:

SCHEDULE

"Whether the action of the management of Bank of India in terminating/discontinuing the service of Shri Mahendra Dalpatbhai Solanki *w.e.f.* 18.02.2002

without following the provision of Section 25 is legal and justified? If not, what relief the concerned workman is entitled to and from which date?"

2. The 2nd party submitted statement of claim (Ext. 3) for declaring his oral termination order dated 18.02.2002 illegal and for his reinstatement in service with continuity and back wages.

3. The 1st party (Bank) submitted written statement (Ext. 6) that 2nd party was a casual labour for temporary period and his appointment was not done in accordance with recruitment in rules. So, the 2nd party is not entitled for reinstatement and the reference is fit to be dismissed.

4. The 2nd party workman Mahendra filed his affidavit examination in chief (Ext. 10) and he was cross-examined by the 1st party lawyer. The case was running for the 1st party evidence.

5. Then withdrawal pursis (Ext. 14) filed on behalf of the 2nd party workman which was noted down by the 1st party lawyer having no objection.

6. The workman Mahendra intends to withdraw from the reference case even after leading evidence due to bipartite settlement arrived at between Union and the management of Bank of India (1st party) to call upon class-'D' staff who completed 240 days of work in a year. So, on the basis of assurance of the 1st party regarding recruiting/absorbing. This withdrawal pursis filed.

7. The dispute between the parties have been settled as per withdrawal pursis. So, there is no need to adjudicate upon the terms of reference and so no dispute award is passed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

का०आ० 2709.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 118/2006) प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2013 को प्राप्त हुआ था।

[सं० एल-12011/191/2005-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2709.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 118/2006)

of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 05.12.2013.

[No. L-12011/191/2005-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT:

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated: 14th August, 2013

Reference: (CGITA) No. 118 of 2006

The Zonal Manager,
Bank of India,
Ahmedabad Zone, Bhadra,
Ahmedabad (Gujarat)-380001

..... First Party

AND

Their Workman
Gopalbhai Tadvi,
Through General Secretary,
Gujarat Labour Union,
24/3, Ellora Commercial Centre,
Behind Relief Cinema, Salapas Road,
Ahmedabad (Gujarat)-380001

..... Second Party

For the first party : Mrs. Meenaben Shah, Advocate

For the second party: Secretary of Union

AWARD

As per order No. L-12011/191/2005 (R(B-II)), New Delhi dated 28.04.2006, the Central Government/Ministry of Labour under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the I.D. Act, 1947 referred the dispute for adjudication in terms of reference under the schedule:

SCHEDULE

“Whether the demand of the General Secretary, Gujarat Labour Union regarding regularisation of the services of Shri Gopalbhai Tadvi, Waterman-cum-Water pump man by the management of Bank of India and payment of consequential benefits is justified and legal? If so, to what relief the workman concerned is entitled to and to what extent?”

2. The 2nd party Union submitted statement of claim (Ext. 5) that workman Gopalbhai is working as waterman-cum-Water pump man since 03.01.1988 and was doing the same work as that of regular sub-staff but was getting only Rs. 400 p.m. prayer has been made for regularising his service as a class-IV employee of the Bank of India from date of appointment and for payment of arrears of the wages paid to the similar situated employees of the Bank of India.

3. The 1st party (Bank) submitted written statement (Ext-6) that the workman Gopalbhai was doing duty of waterman-cum-Water pump man in the premise of Bank's staff quarter as the chairman of staff quarter committee had appointed. So, no relation of master and servant between Bank and the concerned workman, the concerned workman is not covered under the definition of workman in 2(S) of I.D. Act, not entitled to get any relief reference fit to be rejected.

4. The dispute appears to have been settled between Union and the management of Bank and the concerned workman on assurance extended from Bank has intended to withdraw this reference case by filing withdrawal pursis (Ext. 13) and on the pursis 1st party's lawyer noted down having no objection if the pursis is allowed.

5. Now the dispute between the parties have been resolved and settled as per withdrawal pursis (Ext. 13). So, there is no need to adjudicate upon the terms of reference.

So, no dispute award is passed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

कांआ 2710.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (1420/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.12.2013 को प्राप्त हुआ था।

[सं एल-12012/43/2003-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2710.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1420/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Ahmedabad (Gujarat) as shown in the Annexure, in the

industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 05/12/2013.

[No. L-12012/43/2003-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT:

Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,

Dated 14th August, 2013

Reference: (CGITA) No. 1420 of 2004

The Zonal Manager

Bank of India

Ahmedabad Zone, Bhadra,

Ahmedabad-380001

.....First party

AND

Their Workman

Suresh Baldevbhai Makwana

2690/1, Lakha Bhagat Dahela,

Near Panchal Wadi, Dariapur,

Ahmedabad (Gujarat)-380001

.....Second party

For the First party : Ms. Meenaben Shah, Advocate

For the Second party: Shri Y.S. Pathan, Advocate

AWARD

As per Order No. L-12012/43/2003(IR(B-II), New Delhi dated 21.06.2004, the Central Government/Ministry of Labour under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the I.D. Act, 1947 referred the dispute for adjudication in terms of reference under the schedule:

SCHEDULE

"Whether the action of the management of Bank of India in terminating/discontinuing the service of Shri Makwana Suresh Baldevbhai w.e.f. 18.02.2002 without following the provision of section 25 is legal and justified? if not, what the concerned workman is entitled and from which date?"

2. The 2nd party submitted statement of claim (Ext. 3) for declaring his oral termination order dated 18.02.2002 illegal and for his reinstatement in service with continuity and back wages.

3. The 1st party (Bank) submitted written statement (Ext. 6) that 2nd party was a casual labour for

temporary period and his appointment was not done in accordance with the recruitment rules. So, the 2nd party is not entitled for reinstatement and the reference is fit to be dismissed.

4. The 2nd party workman Suresh Baldevbhai Makwana filed his affidavit examination in chief (Ext. 10) and he was cross examined by the 1st party's lawyer. The case was running for the 1st party evidence.

5. Then withdrawal pursis (Ext-14) filed on behalf of the 2nd party workman which was noted down by the 1st party lawyer having no objection.

6. The 2nd party (workman) Suresh intends to withdraw from the reference case even after leading evidence due to bipartite settlement arrived at between Union and the management upon class 'D' staff who completed 240 days of work, in a year. So, on the basis of assurance of the 1st party regarding recruiting (absorbing), this withdrawal pursis file.

7. The dispute between the parties have been settled as per withdrawal pursis. So, there is no need to adjudicate upon the terms of reference and so no dispute award is passed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2013

कांआ 2711.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ सं. 42/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2013 को प्राप्त हुआ था।

[सं एल-12011/107/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2013

S.O. 2711.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. Ref. 42/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 05/12/2013.

[No. L-12011/107/2006-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

PRESENT: Binay Kumar Sinha, Presiding Officer

CGIT-cum-Labour Court,
Ahmedabad,
Dated 12th September, 2013

Reference: (CGITA) No. 42 of 2007

The Regional Manager,
Bank of Baroda,
Regional Office,
Rajkot Region, M.G. Road,
Rajkot-360001

...First party

And

Their Workman
Through The General Secretary
Gujarat Bank workers Union,
Raghar, 8, Jagnath plot,
Post Box No. 10,
Rajkot-360001

...Second Party

For the First Party:— Shri Vikram K. Mashar, Advocate
For the second party (Union):— None

AWARD

The Central Government/Ministry of Labour, New Delhi by its order No L-12011/107/2006 [IR(B-II)] dated 28.05.2007, under clause (d) of Sub-section (1) and Sub-section (2A) of section 10 of the I.D. Act, 1947, referred the dispute for adjudication under the terms of reference in the schedule:

SCHEDULE

"Whether the action of the management of Bank of Baroda, Rajkot in engaging the courier service for collecting and distributing documents from branches to service branch and from service Branch to branches for clearing which is a permanent and perennial nature of job, is legal and justified? If not, what relief the workman concerned are entitled to?"

2. In spite of repeated notice issued the 2nd party neither appear nor submitted statement of demand (claim). Whereas the management of the 1st party bank appeared executed vakalatnama Ext. 6 in favour of Shri Vikram K. Mashar, Advocate who is appearing on the dates fixed for filing statement of claim by the Union (2nd party). Then a pursis (Ext. 9) is filed on behalf of the 1st party that the copy of statement of claim of 2nd party has not been received as yet. So necessary order be passed.

3. It appears that the Union raised the dispute against the management of Bank of Baroda and on failure report of conciliation the reference was made for adjudication by this tribunal. But the Union (2nd party) appears to have slept over the matter and not interested to make contest by filing of statement of claim. The filing of w.s. by the 1st party arises after receiving the copy of S/c.

4. Since the Union has failed to submit statement of claim in spite of number of opportunity, so I find that there is no merit in the reference and is so rejected. Eventually the terms of reference is answered in favour of the 1st party/Bank of Baroda.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2013

का०आ० 2712.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम एस युनाइटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ सं. 65/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 10.12.2013 को प्राप्त हुआ था।

[सं एल-39025/1/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th December, 2013

S.O. 2712.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1 Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. United Bank of India, and their workmen, received by the Central Government on 10/12/2013.

[No. L-39025/1/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
No. 1, DELHI**

I.D. No. 65/2013

Shri Vishnu Rana
S/o Sh. Amar Singh Rana,
R/o B-150, Street No. 9,
Village Gokalpur,
Delhi-110094

...Workman

Versus

1. The Manager,
Pro-Interactive Service Pvt. Ltd.,
31-32 Begampur Park, Shivalik,
Malaviya Nagar, New Delhi-110017.
2. M/s. United Bank of India
Barakhamba Road, Cannaught Place,
New Delhi. ...Management

AWARD

An Automated Teller Machine operator was appointed by Pro-Interactive Services India Pvt. Ltd.

(hereinafter referred to as the contractor) on 08.02.2011 at a monthly salary of Rs. 5500.00, besides conveyance allowance. The ATM operator, namely Shri Vishnu Rana, was deputed to work in East Delhi District, Delhi, where he was supposed to attend to complaints relating to the ATMs installed in that area by United Bank of India (hereinafter referred to as the principal employer). From September to December 2011, some of the customers could not withdraw their desired money from the ATMs, but the amounts were deducted from their respective accounts. A sum of Rs. 82,200.00, deducted from accounts of various customers but could not be withdrawn from ATM in the period referred above, was embezzled by the ATM Operator, in connivance with his colleague, namely, Shri Jitender Samania. The ATM operator did not submit JP Log report, wherein details of entire transactions were to be displayed, with a view to conceal his misdeeds. When facts were enquired from him, he confessed his guilt. Subsequently he absconded from his duties. A report at Police Station Mukherjee Nagar was lodged against him and his associate. After a long gap of time, the ATM operator raised a dispute before the Conciliation Officer, claiming that the contractor had terminated his serves in an illegal manner. Since the contractor contested the claim, no settlement could arrive at between the parties during the course of conciliation proceedings. When a period of 45 days elapsed from the date of moving an application before the Conciliation Officer, Shri Vishnu Rana filed a direct dispute before this Tribunal under the provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act). Since the dispute raised by Shri Vishnu was within the period of limitation, as contemplated by Sub-section (3) of section 2A of the Act, it was registered as an industrial dispute, without being referred for adjudication by the appropriate Government under sub-section (1) of section 10 of the Act.

2. Claim statement was filed by Shri Vishnu Rana pleading therein that he was appointed as ATM operator by the Contractor on 08.02.2011 on a monthly salary of Rs. 5500.00. He was supposed to attend to complaints relating to ATMs, installed by the principal employer in East Delhi District, Delhi. Contractor had not paid his salary for the months of December 2011 and January 2012. His conveyance allowance was also not paid. When he raised a demand in that regard, his services were terminated in an illegal manner. He lodged a complaint against the contractor with the labour authorities. The contractor tried to implicate him in a case of cheating. He presents that action of the contractor in terminating his services is illegal and uncalled for. He claims reinstatement in service with continuity and full back wages.

3. Claim was demurred by the contractor pleading that the claimant misappropriated a sum of Rs. 82,200.00, which amount was taken out by him, In connivance with Shri Jitender Samania, from various ATMs, when customers could not withdraw the amount, which was deducted from

their respective accounts. With a view to conceal his acts, he did not submit JP Log report, giving details of entire transactions of cash received by him from the vault for loading it into the ATMs. He was questioned as to why JP Log report was not submitted and at that juncture, he confessed his guilt. Letter dated 03.01.2012 was served upon him. Thereafter, the claimant absconded. A complaint was lodged against him at PS Mukherjee Nagar on 16.02.2012. Since the claimant was engaged on contractual basis and he himself abandoned his job, there was no occasion for the contractor to terminate his services. His claim for reinstatement in service with continuity and full back wages is not maintainable, pleads the contractor.

4. The principal employer pleads that the bank entered into an agreement with Financial Software System Pvt. Ltd. to provide service for supply, installation and management of 500 ATMs. There was no privity of contract between the claimant and the principal employer. He was a stranger to the bank. He has no claim for reinstatement in service with continuity and full back wages against it, pleads the bank.

5. On perusal of pleadings, following issues were settled:

- (i) Whether the claimant abandoned services of Pro-Interactive Services Pvt. Ltd. with effect from 10.01.2012? If yes, its effects.
- (ii) Whether the claimant is entitled to reinstatement in service of Pro-Interactive Services Pvt. Ltd.?

6. During the course of adjudication, parties arrived at a settlement. Claimant made a statement on oath, contents of which are reproduced below:

'I have settled my grievances with M/s. Pro-Interactive Services Ltd. for a sum of Rs. 23,000.00, paid to me before this Tribunal. Nothing remains due to me from my aforesaid employer towards wages, notice pay, retrenchment compensation, leave encashment, bonus, gratuity etc. My dispute stands subsided and it may be answered accordingly. I give up my claim for reinstatement in service of M/s. Pro Interactive Services Ltd. My dispute may be answered accordingly'.

7. As deposed on oath by the claimant, he received a sum of Rs. 23,500.00 from the contractor before the Tribunal towards his dues for wages, notice pay, retrenchment compensation, leave encashment, bonus and gratuity etc. He had given up his claim for reinstatement in service of the contractor. Thus, it is evident that the claimant has settled his grievances and received a sum of Rs. 23,000.00 as full and final settlement of his claims against his employer, the contractor. In view of these facts, the issues settled above, became redundant. Since the dispute has been

settled, the claimant is not entitled to relief of reinstatement with continuity and full back wages in the service of the contractor. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 30-9-2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

कांआ 2713.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लि० दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं० 2, दिल्ली के पंचाट (संदर्भ संख्या 116/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं एल-30011/44/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2713.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 116/2011) of the Central Government Industrial Tribunal/Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd., Delhi and their workman, which was received by the Central Government on 9/12/2013.

[No. L-30011/44/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II,

PRESENT: Shri Harbansh Kumar Saxena

ID No. 116/11

General Secretary

Versus

Indian Oil Corporation Ltd.

NO DISPUTE AWARD

The Central Government in the Ministry of Labour *vide* notification No L.30011/44/2010-[IR(M)] dated 2.12.2011 referred the following industrial Dispute to this tribunal for the adjudication:—

"Whether the demand of the workmen (As per list attached) for reinstatement with full back wages is just and fair? To what relief the workmen are entitled and from which date?"

On 21.12.2011 reference was received in this tribunal. Which was register as I.D. No. 116/11 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant has not filed claim statement inspite of sufficient opportunities but management filed Written statement wherein it mentioned as follows:—

1. That the reference made by the Government in the present case deserves to be rejected on the grounds that the claimant has no cause of action, whatsoever, against the answering respondent.

2. That it is respectfully submitted that notice for appearance in the said dispute was first issued for 24.02.2012 *vide* this learned tribunal's order dated 21.12.2011. A copy of said order dated 21.12.2011 is annexed as A-I.

3. That it is respectfully submitted that thereafter hearings have been scheduled for 27.04.2012, 11.07.2012, 13.09.2012, 05.04.2013, 02.05.2013, 12.06.2013 and is now scheduled for 31.07.2013. It is further submitted that petitioners have never appeared in the matter in the past eight hearings scheduled in the matter and not even filed the claim statement despite passage of almost months.

4. That it is further submitted that more than the reasonable/justifiable opportunity of having been heard has been granted to the petitioners who have not cared to put in a single appearance in last eight hearings and answering respondent submits that no further opportunity of being heard should be given to the petitioners and matter may be closed henceforth.

In view of the submissions made hereinabove, it is respectfully prayed that the reference be answered in negative and in favour of the respondent, with costs. Without prejudice to above, the respondent further prays that this Hon'ble Court may not give any further opportunity to the petitioners and decide the reference.

In support of its case management moved an application on 9/11/2013. Copy of which has been filed on 2/11/2013.

Wherein following particulars are mentioned:—

Sir,

This is with reference to the last date of hearing, which was held on 10.10.2013 when none of the petitioners appeared in the Court, the court had directed us to produce a letter from the petitioners Contractor regarding payment of all their dues. In this connection, we are enclosing herewith a letter dt. 31/10/2013 from the Contractor, M/s. S.K. Trading Company, certifying that all the dues of the petitioners have been paid/deposited and there is no liability on the part of the said Contractor on account of any payment to the petitioners.

In view of the above, it is respectfully prayed that the reference be answered in negative and in favour of the respondent, with costs. Without prejudice to above, the respondent further prays that his Hon'ble court may not give any further opportunity to the petitioners and decide the reference.

Thanking you,

Yours faithfully,

For INDIAN OIL CORPORATION LTD.

(S.R. GUPTA)

CHIEF APTM:PALAMAFS
TEL.25675343/FAX 25675550

On behalf of management copy of application dated 31/10/2013 has been field which bears as follows:—

Sir,

In the subject matter, it is respectfully submitted that the following workmen, who were employed by me, have paid and/or deposited all their dues *viz.* Salary, PF & Bonus up-to-date and hence there is no liability on our part on account of any payment:—

Name of Workmen (S/Shri)

1. Vikas Chauhan, S/o Shri Karan Singh
2. Rajendra Prasad Saini, S/o Shri Dhanna Ram Saini
3. Jaswant Singh, S/o Shri Ram Kumar
4. Bijendra, S/o Shri Sardar
5. Pawan Kumar, S/o Shri Amarपाल Singh
6. Ravi, S/o Shri Fakir Chand
7. Kuldeep, S/o Shri Mange Ram
8. Manoj, S/o Shri Surendra Kumar
9. Santosh Kumar, S/o Shri Amarपाल Singh
10. Sumit, S/o Shri Baljeet.

The above is submitted for your information and record please.

Yours Sincerely

(S.K. Singh)

Proprietor

In this background this Tribunal has no option except to pass No Dispute Award in light of averments made in the aforesaid W.S. etc.

No Dispute Award is accordingly passed.

Dated : 3-12-2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का०आ० 2714.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम

कारपोरेशन लि० के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 9/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं० एल-30011/63/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2714.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Ltd., Visakhapatnam and their workman, which was received by the Central Government on 9/12/2013.

[No. L-30011/63/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 18th day of April, 2013

INDUSTRIAL DISPUTE No. 9/2011

BETWEEN:

The General Secretary,
HPCL Employees Union,
(Visakha Refinery), (CITU),
Qr. No. B-12, West Yarad Park Sriharipuram,
Visakhapatnam-11

...Petitioner

AND

The Executive Director,
HPCL, Visakha Refinery, P.B. No. 15,
Malkapuram, Visakhapatnam-11

...Respondent

APPEARANCES:

For the Petitioner: None

For the Respondent: Sri Y.V. Sanyasi Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-30011/63/2010-IR(M) dated 22.2.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Hindustan Petroleum Corporation Limited and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of PCL, Visakha Refinery, to deduct the One day wages of 16.10.2008 of Shri K.K. Choudary and 5 other (as per the details enclosed) without giving any opportunity to concerned employee is justified? To what relief the "HPCL Employees Union, Visakhapatnam" is entitled?"

The reference is numbered in this Tribunal as I.D. No. 9/2011 and notices were issued to the parties concerned.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. Inspite of fair opportunity claim statement not filed by the Petitioner union. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 18th day of April, 2013.

M. VIJAYALAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 दिसम्बर, 2013

का०आ० 2715.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लि० के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 8/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं० एल-30011/64/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2715.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Ltd., Visakhapatnam and their workman, which was received by the Central Government on 9/12/2013.

[No. L-30011/64/2010-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: SMT. M. VIJAYALAKSHMI, Presiding officer

Dated the 18th day of April, 2013

Industrial Dispute No. 8/2011

BETWEEN:

The General Secretary,
Petroleum Workers Union,
Visakhapatnam,
C/o HPCL, Visakha Refinery,
Malkapuram, Visakhapatnam-11 ...Petitioner

AND

The Executive Director,
HPCL, Visakha Refinery, P.B. No. 15,
Malkapuram, Visakhapatnam-11 ...Respondent

APPEARANCES:

For the Petitioner: None
For the Respondent: Sri Y.V. Sanyasi Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-30011/64/2010-IR(M) dated 22.2.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Hindustan Petroleum Corporation Limited and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of HPCL, Visakha Refinery, Visakhapatnam for not finalizing the Manpower requirement for new unit, as demanded by the Petroleum Workers Union, Visakhapatnam is justified? To what relief the concerned Union is entitled?"

The reference is numbered in this Tribunal as I.D. No. 8/2011 and notices were issued to the parties concerned.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and

documents. Petitioner union called absent and there is no representation since long time. In spite of fair opportunity claim statement not filed by the Petitioner union. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 18th day of April, 2013.

M. VIJAYALAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 दिसम्बर, 2013

कांआ 2716.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 7/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं एल-30011/65/2010-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2716.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Ltd., Visakhapatnam and their workmen, which was received by the Central Government on 9/12/2013.

[No. L-30011/65/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
HYDERABAD**

PRESENT: SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 18th day of April, 2013

Industrial Dispute No. 7/2011**BETWEEN**

The General Secretary
Petroleum Workers Union,
Visakhapatnam,
C/o HPCL, Visakha Refinery,
Malkapuram, Visakhapatnam-11Petitioner

AND

The Executive Director,
HPCL, Visakha Refinery, P.B. No. 15,
Malkapuram, Visakhapatnam-11Respondent

APPEARANCES :

For the Petitioner : None
For the Respondent: Shri Y.V. Sanyasi Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-30011/65/2010-IR(M) dated 22.2.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Hindustan Petroleum Corporation Limited and their workmen. The reference is,

SCHEDULE

"Whether the action of management of Hindustan Petroleum Corporation Limited, Visakha Refinery, Visakhapatnam for non-finalization of manpower as per the demand of the Petroleum Worker Union, Visakhapatnam and also reducing the present strength of the workman in ETP (Effluent Treatment Plant) union in highly technological machinery is legal and/or justified? To what relief the concerned Union is entitled?"

The reference is numbered in this Tribunal as I.d. No. 7/2011 and notices were issued to parties concerned.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. In spite of fair opportunity claim statement not filed by the Petitioner union. In the circumstances, taking the Petitioner union is not interested in the proceedings, petition is dismissed.

A ward passed accordingly, Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant
Transcribed by her and corrected by me on this the 18th
day of April, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner Witnesses examined for the Respondent

NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 दिसम्बर, 2013

कांआ 2717.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 6/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं० एल-30011/66/2010-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2717.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2011) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Ltd., Visakhapatnam and their workmen, which was received by the Central Government on 9/12/2013.

[No. L-30011/66/2010-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

PRESENT: SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 18th day of April, 2013

Industrial Dispute No. 6/2011**Between**

The General Secretary,
Petroleum Workers Union,
Visakhapatnam,
C/o HPCL, Visakha Refinery,
Malkapuram, Visakhapatnam-11

...Petitioner

AND

The Executive Director,
HPCL, Visakha Refinery, P.B. No. 15,
Malkapuram, Visakhapatnam-11

...Respondent

Appearances :

For the Petitioner : None

For the Respondent : Shri Y.V. Sanyasi Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its Order No. L-30011/66/2010-IR(M) dated 22.2.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Hindustan Petroleum Corporation Limited and their workmen. The reference is,

SCHEDULE

"Whether the demand of the Petroleum Workers Union, Visakha Refinery, Visakhapatnam for finalization of Union release modalities by the management of Visakhapatnam to the union office Bearers to attend the union activities/meetings is justified? To what relief the concerned Union is entitled?"

The reference is numbered in this Tribunal as I.D. No. 6/2011 and notices were issued to parties concerned.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. In spite of fair opportunity claim statement not filed by the Petitioner union. In the circumstances, taking the Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly, Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant Transcribed by her and corrected by me on this the 18th day of April, 2013.

M. VIJAYALAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 दिसम्बर, 2013

कांआ 2718.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टाटा लाइफ इन्श्युरेन्स कंपनी लि० व ओरियन सलूशन सिक्यूरिटी प्रा० लि० डेल्ही के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं० 1, दिल्ली के पंचाट (संदर्भ संख्या 117/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं एल-15025/1/2013-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2718.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tata Insurance Co.Ltd. & Oreiyen Solution Security Pvt. Ltd. and their workman, which was received by the Central Government on 9/12/2013.

[No.L-15025/1/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, DELHI**

I.D. No. 117/2013

Shri Akash Malik
S/o Shri Ikbal Singh,
C/o Rasthtriya Rajdhani
Shramik Sangh (Regd.),
No. 391/4-A, Near SDM Office,
Rampura, Delhi-110035

....Workman

Versus

1. The Manager,
Tata Life Insurance Co. Ltd.,
Flat No. 208, IInd Floor,
Kanchanga Building,
Barakhamba Road,
Connaught Place,
New Delhi - 110001.

2. The Manager,
Oreijan Solution Security Pvt.Ltd.,
E-5, Gali No.5 , Jogi House,
Sahapur Jat, New DelhiManagements

AWARD

A guard was employed by Orient Solution Security Pvt. Ltd. (in short the contractor) to carry out its contractual obligations towards Tata Life Insurance Co.Ltd. (in short the principal employer). He joined his duties on 01.06.2012. His services were dispensed with on 11.12.2012. He raised a demand for reinstatement in service, which demand was not conceded to. Constrained by that fact, he raised an industrial dispute before the Conciliation Officer through Rashtriya Rajdhani Shramik Sangh (Regd.) (in short the Union). Since contractor contested his claim, hence no settlement could arrive it before the Conciliation Officer. Since 45 days from the date of moving an application before the Conciliation Officer expired, the guard opted to file his dispute before this Tribunal for adjudication, using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act).

2. The guard, namely, Shri Akash Malik projects in his claim statement that he was working with the contractor/ principal employer since 01.05.2012. His last drawn wages were Rs. 6600.00 per month. He was made to work for 30 days in a month. Despite that fact, wages, to the tune of Rs. 5720.00 per month, were paid to him. The principal employer was taking his services through the contractor with a view to evade labour laws. Appointment letter, attendance card, pay slip, casual leaves and off on gazetted holidays were not given to him. When he raised demand for the same, contractor/principal employer felt offended. His wages were withheld. When he was in financial stringency, he raised a demand for his earned wages. It annoyed the contractor/principal employer and his services were terminated on 29.11.2012. His wages from 01.10.2012 till 29.11.2012 were not paid. Neither one months' notice nor pay in lieu thereof was given to him. Retrenchment compensation, as contemplated by provisions of 25F of the Act, was not paid to him. Juniors to him were retained in service and as such provisions of section 25-G and 25-H of the Act were also violated. He raised a demand for reinstatement in service on 01.12.2012, but to no avail. He claims reinstatement in service of the contractor/principal employer with continuity and full back wages.

3. None came forward on behalf of the claimant to advance arguments on maintainability of his claim. Constrained with the absence of the claimant or his authorized representative, I have scanned facts, pleaded in the claim statement. My findings on issues involved in the controversy are as follows:

4. As emerged out of the claim statement, the claimant joined his services on 01.06.2012, which services were dispensed with on 29.11.2012. Question for consideration would be as to whether claimant rendered continuous service of 240 days with the contractor/principal employer. For an answer to this proposition, definition of continuous service is to be taken note of. "Continuous service" has been defined by section 25-B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C. 1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding his retrenchment.

5. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], the Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed one year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year."

6. When a workman fails to establish that he worked for atleast 240 days in the year, he cannot claim protection against termination of his services in order to seek regularization of his services of monthly salary with benefits like pension, gratuity etc. Interruption of service occurred during the course of job has to be included in uninterrupted service. Fiction under section 25 B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to the section specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25 B of the Act. Question for consideration comes as to whether the words "actually worked" would not include holidays, Sundays and Saturdays for which full wages are paid? The Apex Court was confronted with such a proposition in *American Express Banking Corporation* [1985 (2) LLJ 539]. It was ruled therein that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Court ruled that Sundays and other holidays, would be comprehended in the words "actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. The court observed that the explanation is only clarifactory, as all explanations are, and cannot be used to limit the scope of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LLJ 308] was distinguished by the Apex court in the case referred above. The precedent was followed in *Standard Motor products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25B of the act.

7. In the light of done law, an enquiry would be made as to whether the claimant rendered continuous service of 240 days in preceding twelve month from the date of his disengagement. To carry out this exercise, facts pleaded in claim statement are to be scanned. When claim statement is perused in order to ascertain the period for which the claimant has worked with the contractor/principal employer, it came to light that the claimant had worked only for 182 days. Thus it is apparent that in preceding 12 months from the date of alleged termination of his service, the claimant had not rendered continuous service for 240 days. From

01.06.2012 to 29.11.2012, he had worked for 182 days only. Since continuous service of one year had not been rendered by the claimant with the contractor/principal employer, he is not entitled for protection of provisions of section 25-F of the Act. Neither notice nor pay in lieu there was to be given to the claimant. His claim for retrenchment compensation has not ripened. Therefore, it does not lie in the month of the claimant to assert that termination of his services is violative of provisions of section 25F of the Act.

8. Though in his claim statement, the claimant projects that juniors to him were retained, yet he has not mentioned names of any of his junior, who was retained in service. Facts pleaded by the claimant make it apparent of name of any junior, who was retained in service, it cannot be said that his juniors were retained when his services were dispensed with. Under these circumstances, provisions of section 25G of the Act does not come into play. It is also not his case that after termination of his service, the contractor/principal employer employed anyone in casual capacity, without offering him an opportunity for re-employment. Under these circumstances, provisions of section 25H of the Act also have no application.

9. In view of the reasons detailed, it is crystal clear that action of the contractor/principal employer nowhere falls within the mischief of the provisions of section 25-F, 25-G and 25-H of the Act. No illegality or unjustifiability can be attributed to the action of the contractor/principal employer, when claimant was not engaged after 29.11.1996. The claimant is not entitled to any relief. His claim is brushed aside. An award is passed in favour of the contractor/principal employer and against the claimant. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का०आ० 2719.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेघाहातुबुरु आयरन ओर माइन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 244/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.12.2013 को प्राप्त हुआ था।

[सं० एल-26012/13/2000-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2719.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 244/2000) of the Central Government Industrial Tribunal-cum-Labour

Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial dispute between the management of Meghahatuburu Iron Ore Mine and their workman, which was received by the Central Government on 09.12.2013.

[No. L-26012/13/2000-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 244 of 2000

Employers in relation to the management of Meghahatuburu Iron Ore Mine of SAIL

AND

Their workmen

PRESENT: SHRI RANJAN KUMAR SARAN,
Presiding Officer

Appearances:

For the employers: Shri D.K. Verma, Advocate

For the workman: Shri U.N. Lall, Advocate

State: Jharkhand

Industry: Steel

Dated: 28.10.13

AWARD

By Order No. L-26012/13/2000-IR(M), dt. 29/08/2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Maghahatuburu Iron Ore Mine of SAIL, to dismiss the services of Sri Kamta Prasad is justified? If not to what relief the workman concerned is entitled?"

2. The case is received from the Ministry of Labour on 18.09.2000. After receipt of the reference both parties are noticed. The workman files their written statement on 03.10.2000. Thereafter the management files their written statement-cum-rejoinder on 19.01.2001. parties examined their respective witnesses.

3. The short point involved in the case, after transfer the workman he did not join in his new assignment, remained

adamant and consequently after due enquiry he was dismissed. Sixteen years job of the workman has already been lost.

4. Presently, the workman has realized and has said that, he being biased by union, people is suffering. Previously, there was no stigma in his service.

5. Considering the facts and circumstance of this case, therefore it is held to engage the workman Sri Kamta Prasad in job without giving him any back wages within 30 days after publication of the award.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

कांआ 2720.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कारपोरेशन लि. पटना के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 01/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.12.2013 को प्राप्त हुआ था।

[सं० एल-30012/13/2002-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2720.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 01/2003) of the Central Government Industrial -Tribunal/Labour Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Bharat Petroleum Corporation Ltd Patna and their workman, which was received by the Central Government on 09.12.2013.

[No. L-30012/13/2002-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of a Reference U/S 10(1) (D) (2A) of
I. D. Act, 1947

Ref. No. 01 of 2003

Employers in relation to the management of Bharat Petroleum Corporation Ltd.

AND

Their workmen

PRESENT : Shri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers: Shri V.K. Pandey, Advocate

For the workman: Sri D. Mukherjee, Advocate

State: Jharkhand

Industry: Petroleum

Dated: 30.07.13

AWARD

By Order No. L-230012/13/2002-IR(M), dt. 10/12/2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether Sri Birendra Ram has worked for 240 days or more with the management of Bharat Petroleum Corporation Ltd. Patna, If so, whether the action of the management in terminating his service is justified? If not to what relief the workman is entitled to?"

2. The case is received from the Ministry of Labour on 01.01.2003. The Concerned workman files their written statement 06.01.2003. Thereafter rejoinder and documents. Each party examined a witness each before this Tribunal.

3. The claim of the workman is, he was rendering service under the management since long doing cleaning, serving tea, coffee house keeping. Since he worked for more than 240 days, he be taken into service and he has been illegally removed for which this reference.

4. On the other hand the management submitted that the workman was a contract labour.

5. But MW-1 in his evidence in chief has stated that, he cannot say that the workman was working under the management since 18.06.1990. The MW-1 who is a manager unable to say, whether for work, any tender was invited. The witness clearly stated that the work of serving tea, coffee house keeping etc. is permanent nature of job. He also said that monthly payment was made to the workman.

6. This being the evidence, the workman is to be absorbed in his post immediately, as regular workman as the workman was a contractual workman has not been proved by the management. But he be not given any back wages as per no work no pay theory.

7. Considering the facts and circumstances of this case, I hold that Sri Brindra Ram has worked for 240 days or more with the management of Bharat Petroleum Corporation

Ltd. Patna, Hence the action of the management in terminating his service is not justified. Accordingly he be absorbed in his post without any back wages.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का०आ० 2721.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स शिवा इंजीनियरिंग सुकिंदा क्रोमाइट माइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेस्वर के पंचाट (संदर्भ संख्या 22/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं० एल-29012/32/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2721.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Shiva Engineering, Sukinda Chromite Mines and their workman, which was received by the Central Government on 9/12/2013.

[No. L-29012/32/2010-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, BHUBANESWAR**

PRESENT: Shri J. Srivastava, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

Industrial Dispute Case No. 22/2012

Date of Passing Order—2nd August, 2013

BETWEEN:

1. M/s G.S. Atwal & Co. (Engineer) (P) Ltd.
C/o TATA Steel Ltd., Jajpur,
Sukinda Chromite Mines At. Po. Kalarangiatta,
Jajpur, Odisha.
2. The Manager, TATA Steel Ltd.,
Sukinda Chromite Mines,
At./Po. Kalarangiatta, Jajpur, Odisha.

3. M/s Shiva Engineer, Sub-Contractor,
Sukinda Chromite Mines,
At./Po. Kalarangiatta, Jajpur, Odisha.

...1st Party-Managements.

AND

Their workman Shri Paresh Mahanta,
At. Ostia, Po. Chingudipal, PS—Kaliapani,
Dt. Jajpur, Odisha.

...2nd Party-Workman.

APPEARANCES:

None. ... For the 1st Party-
Management

None. ... For the 2nd Party-
Workman.

ORDER

An industrial dispute between M/s. Shiva Engineering a contractor of M/s. G.S. Atwal & Co. (Engineer) (P) Ltd. Sub-Contractor of M/s TATA Steel Limited, Odisha and their workman was referred to this Tribunal *vide* Letter No L-29012/32/2010-IR(M), dated 16.1.2012 by the Government of India in the Ministry of Labour and the parties raising the dispute were directed to file statement of claim with relevant documents, list of reliance and witnesses with this tribunal within fifteen days of the receipt of order of reference, but no statement of claim was filed within the stipulated time.

2. Later the 2nd Party-workman appeared on 16.04.2012 and moved a petition for time where-upon one months's time was granted to him.

3. In the meantime the case was taken up at Lok Adalat on 18.5.2012 and 24.8.2012. the 2nd Party-workman did not appear on these dates no filed the statement of claim, though he was present on the regular dates fixed in between the dates fixed for Lok Adalat. On account of his absence a fresh notice was issued on him on 18.9.2012 by regd. post appear and file statement of claim. He appeared on 5.11.2012 *i.e.* the date fixed and filed a memo that he has sent a letter to The Ministry for amendment of the schedule of reference. the Ministry of Labour sent a corrigendum dated 11.2.2013 which was received in this Tribunal on 28.2.2013. the 2nd Party-workman appeared on the next date fixed in the case, but he did not file any statement of claim. though the schedule of reference was already amended previous to that date. The 2nd Party-workman was again and again given chance to file statement of claim, but the did not file any statement of claim till this date.

Hence it is presumed that the 2nd Party-workman is not interested in prosecuting his case. It might be that he has settled the dispute with the 1st Party-Management amicably out of the court.

4. In view of the facts narrated above a no-dispute award is required to be passed in the case.

5. Accordingly a no-dispute award is passed and the reference in answered in the above terms.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का०आ० 2722.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स शिवा इंजीनियरिंग सुकिंदा क्रोमाइट माइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेस्वर के पंचाट (संदर्भ संख्या 23/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं० एल-29012/33/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2722.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Shiva Engineering, Sukinda Chromite Mines and their workman, which was received by the Central Government of 9/12/2013.

[No. L-29012/33/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

PRESENT: Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar,

Industrial Dispute Case No. 23/2012

Date of Passing Order-31st May, 2013

BETWEEN:

1. M/s. G.S. Atwal & Co. (Engineer) (P) Ltd.,
C/o. Tata Steel Ltd., Jajpur,
Sukinda Chromite Mines At/Po. Kalarangiatta,
Jajpur, Odisha.

2. The Manager, TATA Steel Ltd.,
Sukinda Chromite Mines,
At./Po. Kalarangiatta, Jajpur, Odisha.

3. M/s. Shiva Engineer, Sub-Contractor,
Sukinda Chromite Mines,
At./Po. Kalarangiatta, Jajpur, Odisha.

...1st Party-Managements.

AND

Shri Sudhakar Behera,
At./Ostia, Po. Chingudipal,
Ps. Kaliapani, Dist. Jajpur, Odisha,

...2nd Party-Workman.

APPEARANCES:

None ... For the 1st Party-Managements.

None For the 2nd Party-Workman.

ORDER

This reference was received from the Ministry of Labour, Government of India in the office of this Tribunal on 30.1.2012. The 2nd Party-workman did not file any statement of claim on the pretext of moving a petition before the Ministry for amendment in the schedule of the reference. As is revealed from the record of the case the corrigendum notifying the amendment in the schedule of reference was received in the office of this Tribunal on 11.3.2013 though it was notified on 11.2.2013. But even after the amendment in the schedule of reference the 2nd Party-workman did not file any statement of claim nor appeared in the Tribunal on subsequent two dates. It appears that the 2nd Party-workman is now not interested in prosecuting his case against the Management as he might have settled the dispute amicably with the Management.

2. In view of the above no purpose would be served if the case is kept pending any more. Therefore a no-dispute award is required to be passed in the case and accordingly no-dispute award is passed.

3. Reference is answered in the above terms.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का.आ. 2723.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स शिवा इंजीनियरिंग, सुकिंदा क्रोमाइट माइंस के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के

पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं. एल-29012/34/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2723.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Shiva Engineering, Sukinda Chromite Mines and their workman, which was received by the Central Government on 9/12/2013.

[No. L-29012/34/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

PRESENT : Shri J. Srivastava, Presiding Officer, C.G.I.T.-
cum-Labour Court, Bhubaneswar,

Industrial Dispute Case No. 24/2012

Date of Passing Order-31st May, 2013

BETWEEN:

1. M/s. G.S. Atwal & Co. (Engineer) (P) Ltd.,
C/o. TATA Steel Ltd., Jajpur,
Sukinda Chromite Mines At/Po. Kalarangiatta,
Jajpur, Odisha.
2. The Manager, TATA Steel Ltd.,
Sukinda Chromite Mines,
At./Po. Kalarangiatta, Jajpur, Odisha.
3. M/s. Shiva Engineer Sub-Contractor,
Sukinda Chromite Mines,
At./Po. Kalarangiatta, Jajpur, Odisha.

...1st Party-Management.

AND

Shri Atal Mohanty,
At. Ostia, Po. Chingudipal, Ps. Kaliapani,
Dist. Jajpur, Odisha.

...2nd Party-Workman

APPEARANCES:

None ... For the 1st Party-Managements.

None For the 2nd Party-Workman.

ORDER

This reference was received in the office of this Tribunal on 30.1.2012. The 2nd Party-workman in pursuance of the order of reference has not filed any statement of claim. Therefore order for issue of notice was passed on 29.2.2012. Thereafter the 2nd Party-workman orally prayed for time and on being asked to move proper application he moved application for time. Even on later dates he did not file any statement of claim. He also took time on the ground that he has moved a petition before the Ministry of Labour for amendment of the schedule of reference. A corrigendum amending the schedule of reference was received in this office on 28.2.2013 and accordingly the schedule of reference was amended, but on three dates fixed thereafter he did not appear and file the statement of claim.

2. In the circumstances it appears that the 2nd Party-workman is not interested in prosecuting the case as he might have settled the dispute with the Management out of the court amicably and now has no grievance to raise before this Tribunal. Hence it is no use to keep the case pending indefinitely and a no-dispute award is required to be passed in the case.

3. Accordingly no-dispute award is passed. The reference is answered in above lines.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का.आ. 2724.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अरुण कंस्ट्रक्शन सुकिन्दा क्रोमाइट माइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेस्वर के पंचाट (संदर्भ संख्या 46/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 9.12.2013 को प्राप्त हुआ था।

[सं. एल-29012/14/2011-आई आर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2724.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Arun Construction, Sukinda Chromite Mines and their workman, which was received by the Central Government on 9.12.2013.

[No. L-29012/14/2011-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT BHUBANESWAR**

PRESENT : Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 46/2012

Date of Passing Order—21st March, 2013

BETWEEN:

M/s Arun Construction,
Sub-contractor of M/s. G.S. Atwal,
At Kanehipur, PO Jajpur Road,
Dt. Jajpur-755019, Orissa.
M/s. G.S. Atwal, Contractor of Sukinda
Chromite Mines, At./PO Kalarangiatta,
PS Kaliapani, Jajpur.

... 1st Party-Managements.

AND

Shri Deben Kalah,
S/o Makar Kalah,
At Mahulkhal, PO. Ransol,
Ps. Bhuban, Dt. Dhenkanal,
Orissa.

... 2nd Party-Workman.

APPEARANCES:

None ... For the 1st Party-Managements.

None ... For the 2nd Party-Workman.

ORDER

Case taken up today. Parties are absent. The 2nd Party-workman has not yet filed any statement of claim though a period of more than ten months has elapsed. Notices to the 2nd Party-workman have been issued twice through registered post on 27.9.2012 and 13.02.2013 and once through ordinary post on 2.1.2013, but the 2nd Party-workman has not responded to any notice and did not file any statement of claim. Therefore it seems that the 2nd Party-workman is not interested in pursuing his case or possibly he might have settled the dispute out of the court amicably with the 1st Party-Management. Hence it is no use to keep the case pending indefinitely and a no-dispute award is to be passed in the case. Accordingly a no dispute award is passed.

The reference is answered as above.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

AND

का.आ. 2725.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अरुण कंस्ट्रक्शन सुकिन्दा क्रोमाइट माइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 47/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 9.12.2013 को प्राप्त हुआ था।

[सं. एल-29012/16/2011-आई आर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2725.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 47/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Arun Construction, Sukinda Chromite Mines and their workman, which was received by the Central Government on 9.12.2013.

[No. L-29012/16/2011-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT: Shri J. Srivastava, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

Industrial Dispute Case No. 47/2012

Date of Passing Order, 28th May, 2013

BETWEEN:

1. The M/s. Arun Construction,
Sub-Contractor of M/s. G. S. Atwal,
At. Kanehipur, Po. Jajpur Road,
Distt. Jajpur-755 019, (Orissa)
2. M/s. G.S. Atwal, Contractor of
Sukinda Chromite Mines, At./Po. Kalarangiatta,
Ps. Kaliapani, Distt. Jajpur.

...1st Party-Management.

Shri Kusaleswar Mahanta,
S/o Dulai Charan Mahanta,
At. Godikansa, Po. Purujoda, Ps. Telkoi,
Distt. Keonjhar, (Orissa).

...2nd Party-Workman.

APPEARANCES:

None: For the 1st Party-Managements.

None: For the 2nd Party-Workman.

ORDER

An industrial dispute was referred to this Tribunal for adjudication *vide* letter No. L-29012/16/2011-IR(M), dated 13.04.2012 by the Government of India in the Ministry of Labour exercising the powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947.

2. In pursuance of the order of reference the parties raising the dispute had to file the statement of claim within fifteen days of the receipt of order of reference along with relevant documents and list of witnesses. But on failure to file the statement of claim within fifteen days of the receipt of order of reference this tribunal issued notice to the 2nd Party-workman on 27.9.2012. But no statement of claim was filed on the date fixed for the same. Thereafter order for issue of notice through registered post was passed on 22.2.2013 and notice was issued on the same date to the 2nd Party-workman fixing 25.3.2013 for filing of statement of claim. On the date so fixed the parties did not appear and no statement of claim was filed by the 2nd Party-workman. Another date for today was given for filing of statement of claim but even today neither the 2nd Party-workman appeared nor filed any statement of claim. Therefore it seems that the 2nd Party-workman has either settled the dispute with the Management amicably out of the court or has no dispute to raise any grievance.

3. Under these circumstances there is no use to continue with the case waiting for their presence and filing of the pleadings. Hence a no dispute award is to be passed in this case. According a no dispute award is passed.

4. Reference is answered in terms of the above order.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2013

का०आ० 2726.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू इंडिया इन्श्युरन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं० 2, दिल्ली के पंचाट (संदर्भ संख्या 06/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 9/12/2013 को प्राप्त हुआ था।

[सं एल-17011/1/2008-आई आर(एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 12th December, 2013

S.O. 2726.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2008) of the Central Government Industrial Tribunal/Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New India Insurance Co. Ltd., Delhi and their workman, which was received by the Central Government on 9/12/2013.

[No. L-17011/1/2008-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

PRESENT : Shri Harbansh Kumar Saxena

ID No. 6/08

Sh. Govind Ram

Versus

New India Insurance Co. Ltd.

AWARD

The Central Government in the Ministry of Labour vide notification No. L-17011/1/2008-(IR(M)) dated 02/04/2008 referred the following industrial Dispute to this tribunal for the adjudication:—

"Whether the termination of the workman Sh. Govind Ram by the management on 10/01/2007 (when the matter of workman's regularization was under conciliation with ALC(C), New Delhi, without following the provisions of ID Act is just and legal? 2. Whether the demand of General Insurance Employees Federation for regularization the service

of Sh. Govind Ram with the management of New India Assurance Co. Ltd. is just, valid and legal? If so, to what relief the workman is entitled for and from which date?"

On 07/04/2008 reference was received in this tribunal. Which was register as I.D. No. 06/08 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement. Wherein he stated as follows:—

1. That the aforesaid workman has ceaselessly worked as Casual SSF with the Company since 1995 to Jan. 2007 and been paid through cash/cheques accordingly.

2. That in 1998, the Company has invited the applications for the post of SSF and also considered his candidature of casual employees for the post of permanent SSF.

3. After scrutinizing his application *vide* letter No. DRO I PERS: 98 dt. 01.04.1998 company has called the workman for appearing before interview committee on 24.04.98.

4. That unfortunately till date no result of same recruitment exercise has been declared and vacancies are still laying as un filled which is a gross unfair labour practice on the part on the management.

5. That after resorting all options of amicable settlement we have raised an industrial dispute with the ALC©, New Delhi with a claim that the workman should be absorbed as a permanent employee of the Company.

6. That Divl. Manager of Azadpur Divl. Office of the New India Ass. Co. Ltd. in his reply dated 05.09.2006 to ALC© has categorically admitted that prior his joining as Divl. Manager at Azadpur office the workman was already working with the company.

7. That *vide* letter No. ALC-II/8 (377), 2006 RSC dt. 09.06.2006, the matter was ceased by the ALC under section 33 of ID Act but after attending 7 dates with ALC ©, the management has terminated the services of the workman on 10.01.2007 without observing the provisions of section 33 of ID Act.

Sir, keeping in view of the above circumstances the union would like to implore before the Hon'ble tribunal.

(a) To pass an order to absorb the workman with retrospect effect as per Hon'ble Supreme Court Judgement in the case of ONGC vs Engg. Mazdoor Sangh.

(b) To stern action against the violators of section 33 of ID Act, 1947 who have terminated the services of the workman during the pendency of proceedings and not reinstated him even after repeated advices of ALC©.

Against claim statement management filed following written statement:—

1. That all the allegations and statements made in the statement of claim are denied and disputed save and except those which are matter of record and admitted herein below.

2. That the statements/allegations made by the workman are tissues of falsehood.

3. That the statements made in Para 1 of the statement are denied and disputed since the aforesaid workman was never employed as casual SSF with the Management Company even for a single day, as such the question of the payment from 1995 to June 2007 either by cheque or cash did not and could not arise at all. The workman must be put to strict proof of his alleged statements.

4. That so far as the question of inviting applications for the post of SSF is alleged in Para 2 of the claim statement, it is stated that the management of New India Assurance Co. R.O. II, Scope Minar, Laxmi Nagar, New Delhi-92, never invited applications for the appointment of SSF as such the question of consideration of his (workman) candidates had never arisen.

5. That the statements contained in Para 3 of the claim statement is vehemently denied and disputed by the Management. It is specifically denied that the Management has ever issued the letter as alleged in the claim statement. The Management challenges the genuineness of the said letter even if it is produced by the workman and the workman must be put to strict proof of the genuineness of the said letter.

6. That the statements contained in para 4 of the claim statement are denied and disputed. It is stated that since there was no occasion at all to call for interview for the appointment of permanent SSF in view of the fact that there was/is no sanctioned post of SSF, as such the question of either calling for interview and or announcement of result and/or filling the said post did not and could not arise at all.

7. That the statements contained in Para 5 of the claim statement are matter of record and does not warrant any reply from the Management in view of the factual positions stated herein above.

8. That so far the statements in Para 6 of the statement of claim is concerned, it is stated that the then Divisional

Manager has categorically stated that Sri Gobind Ram was intermittently/occasionally engaged for casual work for attending the casual nature of work i.e., Sri Gobind Ram's services were take purely on intermittent basis i.e., as and when required to do the casual nature of work for part time duties. It is further pointed out that he was not engaged on part time basis in the services of the Company continuously for more than 240 days in total for the last many years as alleged by the claimant. The then Divisional Manager of Azadpur Branch has specifically mentioned in the said letter that not formal appointment letter has ever been issued by the management due to the admitted fact that no formalities were done as per procedure for regular appointment.

9. That the statements contained in Para 7 of the claim statement is partly matters of record and the same does not warrant any reply. It is further stated that since no appointment letter to engage the claimant Sri Gobind Ram Singh was ever made by the Management Company, as such the question of termination of his services had never either on 10.01.2007 or on any other date without observing the provision of Sec. 33 and/or any other provisions of the I.D. Act.

10. That the management company states and submits that it being state as such is obligated to follow the constitutional requirement of appointment as also the Recruitment Rules framed by it in order to appoint the claimant, which has never been done in this case as such the claimant has not got any locus standi and/or status for being regularized as permanent employee of the Management Company.

11. Prescribed Rules for appointment of the regular employee has never been followed to engage the workman. It is further stated that there was/is no vacant and/or sanctioned post of SSF in the New India Assurance Company Ltd's offices at New Delhi.

In view of the facts and circumstances mentioned herein above, it is therefore, prayed that your honour may please be graciously pleased to dismiss/reject the claim of the claimant Sri Gobind Ram and pass a Nil Award.

ADDITIONAL WRITTEN STATEMENT ON BEHALF OF THE MANAGEMENT OF THE NEW INDIA ASSURANCE CO. LTD.

Preliminary Objections:

That is stated and submitted on behalf of the Management of the New India Assurance Company Limited that since no valid and legal Industrial Dispute has been arisen as such, the reference made by the Government is bad in law.

That it is further stated and submitted that no proper adjudication proceedings were held at the instance of Assistant Labour proceedings, Block B/2, E/3, Cruzan Road, Barrack, K.G. Marg, New Delhi and as such the failure report of the conciliation Proceedings submitted by Assistant Labour Commissioner to the Appropriate Government is bad in law and hence the reference is illegal.

That it is stated that Sh. Gobind Ram is not a workman in view of the provisions of Industrial Disputes Act, 1947 and as such there is no valid and legal dispute between Sh. Gobind Ram and the Management of the New India Assurance Company Limited.

That it is further stated and submitted that since Sh. Gobind Ram is not a work-man, the dispute raised by the General Insurance Employees Federation, Northern Region, represented by Sh. O.P. Rajodia, General Secretary, is bad in law since Sh. O.P. Rajodia, General Secretary had got no locus standie to raise the dispute and represent the alleged workman in this case.

In view of the facts and circumstances mentioned in the written statement filed on 16.09.2008 and also keeping in view of the facts and circumstances mentioned in this Additional Written statement NIL AWARD may kindly be passed by way of dismissing/rejecting the claim of the claimant Sh. Gobind Ram Singh.

Workman filed rejoinder wherein he stated as follows:—

Preliminary Objections:—

1. That it is matter of record that the aforesaid claimant had been working in the New India Assurance Company for several years and proof of the entire payment made to him was already produced before the ALC and as per mandatory provisions of providing a copy to the opposite party the copies of the same were handed over to the management by the ALC. Hence now denial on the part of the management is unjust and ridiculous and also a disrespect to the judicial machinery. Nevertheless, another set of those copies is enclosed herewith.

2. That though we are having numbers of irrefutable proofs of the payments of several years but to avoid to make the file more bulky we are only submitting the proofs related to period 7.01.2005 to 7.10.2006 and beyond to this period till his illegal termination of his services, all proofs are well available in the office. It is pertinent to mention here that apart from these vouchers the copies of the cheques No. 666921, 667383, 667857, 668071 & 689019 issued to him are also enclosed for your kind perusal.

3. That as mentioned in Para 4 of management statements that The New India Assurance Co. LTD., DROII, Scope Minar, Laxmi Nagar Delhi had never invited the applications for the appointment of SSF. In this connection we agree with the management that Delhi Regional Office II of the New India Assurance Co. has not invited the applications since Delhi Regional Office II is not authorized to conduct such type of exercise for recruiting the staff for any office in Delhi State but the Officer who has signed the WS should not forget that for such exercises only Delhi Regional Office-I situated at Jeevan Bharti, Connaught Circus New Delhi is authorized to do so but the management of Delhi Regional Office II should not be escaped for any unfair labour practices meted out in the offices falls under Delhi Office II. Hence the signatory of the WS must have show is prudence and should not try to mislead the Hon'ble court due to his hare brained fancy. And being a public servants he must have realize his obligations and bindings that real facts at any coast should not be twisted.

4. That we welcome the contention of the management mentioned in the para 5 for asking to produce the strict proof of the genuineness of the Interview letter No. DROI/pers/98 issued to the workman but after passing the litmus test of its genuineness the management must come forward with a brave face to concede the facts and claim of the Union without further contest in the case. Moreover we are also enclosing the copy of the application with was originally submitted with the management of Azadpur DO and forwarded to the Delhi Regional Office I through Delhi Regional Office II and against the same application the call letter for interview, which itself proves the relation of the workman with the company since many years.

5. That so far the para 8 of the management statement is concern the photo copies of the vouchers and cheques may be enough to sustain our claim. Hence no need of any counter reply on this point.

6. That so far the para 9 of the WS is concern it is again ridiculous on the part of the management by saying that since no appointment to engage Sh. Govind Ram was issued by the company. In this connection we would like to state here that non issuance of formal appointment letter by the management does not debar the employee to seek his protection as well as his claim under rule 25 of the Industrial Dispute Act 1947 rather engaging an employee without an appointment letter and force him to be casual employees for a several years is a gross violation of the labour legislations as per schedule V of the Act for which the management is liable to be severely prosecuted.

Hon'ble Sir, in the case the General Secretary, Bihar state Road Transport Corp. Vs Industrial Tribunal Patna & others 1988 (2) LLj 109 Hon'ble Supreme Court had directed the regularization of casual labourers had been working for a long number of years.

Similarly in Rajindra Prasad Tomer & others Vs Mayo Sports complex and others 1991 (2) CLR 318 the Allahabad High Court has laid down that an employee cannot be kept on daily wages earners had worked for a number of years, regularization of such daily wage earners is imperative under the constitutional philosophy, even if there is no rule for regularization.

2. Also in a case title General Secretary, Reserve Bank of India's workers Organization Vs Manager RBI vide Gazette of India, part II Sec. 3 (ii) dated 1.10.1994 held that clause 10 of the Vth schedule of Section 2(rrO of the ID Act 1947 clearly says that to employ workmen as casuals or temporaries and to continues them as such for a years, with object of depriving them of the status and privilege of the permanent workmen is an unfair labour practice.

3. As referred in our claim that in case ONGC vs Eng. Mazdoor Sangh (2007) 1 SC the Hon'ble Supreme Court said that workmen who had admittedly completed 240 days and had acquired a temporary status be regularized.

Sir, it would further relevant to mention here that in a recent case sankerlingam Vs The New India Assurance Co. Ltd. CP No. 4445-2006 Hon'ble Supreme Court while disposing the petition of the company vide its decision dated 03.10.2008 has directed the same Company to reinstate the workman with full back wages. Sir, it is needless to emphasize here that the case of Sh. Gobind Ram is a carbon copy of the case of sankerlingam.

Sir, keeping in view of the above we again request the Hon'ble Tribunal

1. To pass an order to absorb the workman with retrospect effect.

2. To take a stern action against the management for violation of section 33 of the ID Act.

3. To pass strictures against the signatory of the Management WS with misleading statement and concealing the facts.

My Ld predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as

follows :—

"Whether the termination of the workman Sh. Govind Ram by the management on 10/01/2007 [when the matter of workman's regularization was under conciliation with ALC (C), New Delhi] without following the provisions of Id Act is just and legal? 2. Whether the demand of General Insurance Employees Federation for regularization the service of Sh. Govind Ram with the management of New India Assurance Co. Ltd. is just, valid and legal? If so, to what relief the workman is entitled for and from which date?"

Workman in support of his case filled affidavit in his evidence wherein he stated as follows :—

That I had worked with The New India Assurance Co. Ltd, A2/3, Lusa Tower Azadpur Delhi-110033 since may 1992 as subordinate staff and I was being paid through cash/cheques.

That since the proof of payment made to me then I claimed my tenure since 1995 to January 2007 only.

That on several occasion, I had requested the management to regularize my services as a permanent employees but no avails.

That in the year 1998 the Company has invited the application for the post of subordinate staff and my application was forwarded to Regional office duly recommended by the then Divisional Manager.

That after considering the facts the Delhi Regional office I (which the appropriate and authorized office to conduct the recruitment exercise on behalf of the offices situated with in Delhi State) has called me for interview on 24.04.1998, the copy of the same has already submitted with my claim just to prove they may employment in the company as casual subordinate staff.

That on my request the GIEF NR vide its letter dated 3.05.2006 has raised this issue before the Asst. Labour Commissioner to resolve the issue.

That before ALC I had submitted the copies of cash vouchers/cheques issued to me during the period.

That apart from these submitted copies so many cheques vouchers are available in office record and same be verified.

That during the pendency of conciliatory proceedings before the ALC the company has abruptly terminated my services in Jan. 2007.

That the claim submitted by me through the General Secretary, GIEF NR is legitimate and based on the facts.

He was cross-examined by Shri A.N. Choudhary, A/R for the Management as follows:—

I had applied for the post of subordinate staff on 23.04.1998. The Interview letter was signed some Deputy Manager. The date mentioned on the letter is 1.04.1998. No appointment letter has ever been issued to me by the management. No termination letter too was ever received by me. I used to clean the water cooler which used to be done throughout the year. It is incorrect to suggest that I was not regularly appointed and the management used to call me only as and when some work used to be there for my doing.

Thereafter workman closed his evidence.

Management in support of his case produced Narendra Kumar Jain in the MW1. He stated as follows:—

1. That I am fully conversant with the facts of the case and have been duly authorized by the competent authority to file affidavit in this case on behalf of the management of New India Assurance Co. Ltd.

2. I state that Sh. Gobind Ram, the claimant in this case, was never an employee/workman of the New India Assurance Company's office either at Azadpur or any other office/s.

3. I state that Sh. Gobind Ram used to supply tea to the staff members of the New India Assurance company (hereinafter referred to as management/company) and at times he was also used as cleaner of utensils and tables or filling of water coolers as and when required and that too occasionally and was paid on the basis of work entrusted.

4. I state that payments for the aforesaid job were made by obtaining vouchers and payments could be commensurate with the kind of work performed by Sh. Gobind Ram.

5. I state that Sh. Govind Ram was engaged intermittently as and when occasion arose and not on regular basis.

6. I state that Sh. Gobind Ram was never appointed as an employee/workman by and/or behalf of the competent authority of the management after following due process of selection as envisaged in the Rules prescribed for and followed by the management after taking into consideration the principles laid down by hon'ble Supreme Court of India in the case of "Secretary, State of Karnataka & ors. Vs. Uma Devi & Ors." reported in (2006) 4 SCC1.

7. I also deny and dispute genuineness of the alleged office copy of alleged application dated 23.04.1998 submitted by Sh. Govind Ram and received by the office of the company and the same has been alleged to have been

submitted much after the issuance of the alleged interview letter dated 01.04.1998.

8. That I state that the recruitment exercise for the appointment of subordinate staff was initiated some time in 1998. Thirty (30) vacancies were declared and lists of eligible candidates were called for from Employment Exchange as well as Welfare Association. The management received a list of 722 candidates in total and all the candidates were called for interview. However, this exercise was kept in abeyance in view of Head Office Circular dated 15.04.1998 and no one was interviewed and as such no appointment has been made till date against that recruitment exercise.

9. I further state that at no point of time the question of any request by Sh. Govind Ram to the competent authority of the management to regularize his services could not/did not arise at all.

10. I further state that Sh. Gobind Ram was never employed on regular basis by the competent authority of the management as such the question of termination of his service either in January, 2008, or on any other date could not/did not arise at all.

11. I further state that the claimant Sh. Gobind Ram is not entitled either for a day's wages or any part thereof of for regular reemployment/reinstatement as claimed by him.

12. I state and submit to this Hon'ble court that the claim petition and/or affidavit filed by Sh. Govind Ram, is false and frivolous and is liable to be dismissed.

He was cross-examined by A/R workman on 02/08/2013.

Written Argument on Behalf of the Workman filed by Mr. O.P. Rajodia are as follows:—

1. At the outset the union would like to mention here that from the beginning the respondent management is indulging in mischievous activities and giving misleading statement before the Honorable court.

2. That Union *vide* its letter dated 3.05.2006 has raised the issue before the Assistant Labour commissioner for giving permanent employment to the workman in the New India Assurance Com. Ltd; where he was working as temporary subordinate staff.

3. That *vide* reply dated 5.09.2006 the management has confirmed having engaged the workman as casual workman. Not only that the then Divisional Manager, Shri RP Singhmar has also confirmed that the workman working in the Company prior to his joining as Divisional Manager at Azadpur Divisional Office in July 2000.

4. That it would be significant to mention here that though, Mr. Singhmar shown his date of joining at Azadpur office as 14.07.2006 but official record says that he has joined this office on 14.07.2000 and remained there up to

13.09.2006. In its rejoinder dated 06.10.2006 before honorable ALC, the Union has also raised this issue of misleading statement on the part of management, and corrected his tenure and management did not raise any counter objection in this regards that itself proved our statement.

5. That after a prolong and protected conciliatory proceedings at ALC office, since nothing has been considered by the respondent management then the case has been forwarded to Ministry of Labour which resulted a order of reference No. L17011/1/2008-IR(M).

6. That in its reply to the learned court the respondent management not only denied the temporary employment of the workman but also denied its own record as well as copy of payment vouchers, submitted by the union.

7. That not only that the respondent management has also denied having conducted any recruitment exercise and Mr. Govind Ram was called for interview on 24.04.1998 on the basis of the temporary employment with the Company but after filing on RTI Application and on long persuasion while complying with CIC order No. CIC/DS/A/2010/000650 dated 22.10.2010 the respondent management has provided the information and confirmed about having conducting recruitment and Mr. Gobind Ram one of candidate called for interview that forced the respondent management to submit an application for withdrawal of earlier affidavit and to file fresh evidence dated 13.02.2012 there in many vital point have been admitted.

8. That when management representative did not cooperate during the cross-examination then *vide* letter dated. 4.02.2013 that union for fair adjudication has preferred an application for calling the official record of the vouchers, submitted by the Union along with the claim, from 01.01.2005 to 31.10.2006.

9. That during the cross-examinations the management has clearly not only admitted the employment of workman in the office but also admitted payments made to the workman regularly.

10. That the management representative not only confirmed that the job that was being performed by the workman actually being performed by the subordinate staff (Class IV employees) but also recognized the workman as same persons who had been working under him.

11. That in the case of General Secretary, RBI workers Organization Vs. Manager RBI, Part II Sec. 3(ii) dated 1.10.1994 held that clause 10 of the V the Schedule of Section 2(rrO) of the ID Act 1947 clearly says that to employ as casual or temporaries and to continue them as for a years, with object of depriving them of the status and privilege of the permanent workman is an unfair labour practice.

12. That as requested earlier the union would like to reiterate its request that keeping in view of ruling in case of General Secretary, Bihar Road Transport Corp. Vs. Industrial Patna & other 1988 (2) LLJ 109, Rajindra Prasad Tomar & others Vs. Mayo sports Complex and others 1991 (2) CLR 318 in Allahabad Court, ONGC Vs. Eng. Mazdoor Sangh (2007) 1 SC 3 and in the case of New India Assurance Co. Ltd.; Vs. A Shankeralingam Civil Appeal No. 44445 of 2006 dated 03.10.2008, by the honorable apex court, your honor may kindly be graciously please pass an appropriate order to observe the workman as permanent employee with a retrospect effect.

Copy of which furnished to management but on behalf of management on reply filed.

A/R for the management placed reliance on following rulings:—

1. SECRETARY STATE OF KARNATAKA AND OTHER'S

VERSUS

UMADEVI (3) AND OTHERS

(2006) 4 Supreme court cases 1

Public employment-Absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment-Issuance of directions for, and for stay of regular recruitment process for the posts concerned—Impermissibility of—Need for addressing concerns of equity for all, and not of just the few before the court, by upholding of constitutional scheme of public employment, whose hallmark is equally of opportunity—Held, Supreme Court and High Courts should not issue such directions unless the recruitment itself was made regularly and in terms of the constitutional scheme—Reasons for, discussed extensively—Financial/economic impact of such directions, as a factor—The wide powers under Art. 226 are not intended to be used for issuance of such directions, certain to defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment—Supreme Court is bound to insist on the State making regular recruitments and appointments and not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment—It is erroneous for Supreme Court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment—Further, courts must be careful in ensuring that they do not interface unduly with the economic/financial arrangement of the affairs of the State or its instrumentalities.

2. M.P. HOUSING BOARD AND ANOTHER*Versus***MANOJ SHRIVASTAVA**

(2006) 2 Supreme Court Cases 702

Casual Labour/Temporary employee—Daily wager—Status of -Held, a daily wager does not hold a post or derive any legal right in relation thereto, unless he is appointed (1) against a duly sanctioned vacant in post, and (2) upon following the statutory law operating in the field—If an appointment is made in contravention of either (1) or (2) such appointment would be void—further, the effect of such void appointment confers no legal right—Application—Validity of appointment—Preconditions for—Effect of invalid appointment—Service Law.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme court on the point or reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013) II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000/- (Rs. Fifth Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, "grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated : 7-11-2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2013

कांआ 2727.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट संदर्भ संख्या 22/2006 के शुद्धि पत्र को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/12/2013 को प्राप्त हुआ था।

[सं० एल-41012/165/2005-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th December, 2013

S.O. 2727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the corrigendum of Award Ref. 22/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Central Railway, and their workmen, received by the Central Government on 13/12/2013.

[No. L-41012/165/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated : 12th April, 2013

PRESENT : Shri S. N. Navalgund,
Presiding Officer

CR No. 22/2006**I Party**

Sh. Rajappa,
Since Deceased rep.
by LR's
Smt. Chennamma, Wife,
Shri Ravi Kumar, Son
Shri Ashok, Son
Shri Vijay, Son
Shri Anil, Son
Kum. Preethi, Daughter
S/o Ayyappa, No. 9/12, Near Railway
Station, Bari Nagar, Shahbad Tq.,
Gulbarga District.
Karnataka.

II Party

The Sr. Divisional Personnel officer.
Central Railway, O/O D RM.,
Solapur, Maharashtra.

APPEARANCES:

I Party : Sh. B.S. Byre Gowda,
Advocate

II Party : Sh. S. R. Khamroz Khan,
Advocate

AWARD

1. The Central Government on submission on FOC report by ALCC (C), Bellary in No. 8(02)/2005/RLC/BLY dated 15.09.2005 made this reference for adjudication *vide* Order No. L-41012/165/2005-IR(B-II) dated 22.05.2006 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the Central Railways, Solapur in terminating the services of Shri Rajappa S/o Ayyappa, Ex-Casual labour without complying the mandatory provisions of Industrial Disputes Act, 1947 and also in not providing regular permanent post of Group 'D' to him in the Railways is justified? Is not, to what relief the workman is entitled to?"

2. On receipt of the reference registering it in CR 22/2006 when notices were issued to both the sides both entered their appearance through their respective advocate, the I party filed his claim statement on 24.01.2007 and II Party filed its Counter Statement on 27.04.2007. Subsequently the wife and five children of I party workman came on record as Legal Representatives reporting that he died on 08.03.2009 leaving behind them as his Legal Representatives.

3. The I party in the claim statement filed by him on 24.01.2007 stated that he had worked continuously for three years (without specifying the years) in the II Party and without compliance of Section 25(f) of ID act 1947 his service has been orally terminated alleging that he had submitted false school leaving certificate and there after inspite of his repeated requests since his termination was not recalled he who belongs to a Poor Scheduled Tribe Family and could not get any alternative job, II Party be directed to provide him Regular Permanent Post of Gr. D with continuation of service and other consequential benefits. He also stated in Para 7 of his claim statement that he has reliably learnt one of his colleague by name Netaji, S/o Kashinath Jadav who was also removed from service has been appointed on regular post in Medical Hospital, Solapur, as Safaiwala and thereby II Party has practiced discrimination and unfair labour practice.

4. In the counter statement filed by the II Party it is contended the I Party workman who had rendered service as Casual Labour from 09.06.1994 to 31.12.1994 for a period of 145 days under Carriage Foreman/Wadi from 12.03.1985 to 31.12.1985 for a period of 295 days under Carriage and Wagon Superintendent, Wadi and from 01.01.1986 to 18.02.1986 for a period of 49 days under Carriage and Wagon Superintendent, Wadi, thereafter, abandoned the job for the reasons best known to him, subsequently, when a notification was issued on 30.06.1999 for consideration of all the eligible and suitable casual labourers the I Party workman also submitted his application with all the required

documents along with School Leaving Certificate as proof of age and qualification and he was also called for screening and it was found that the school leaving certificate produced by him was false to which effect the Head Master of the concerned school gave in writing that the same was not issued by the School. It is further contended this fact has been accepted by the I party workman in his explanation to the ALC(C), Bellary with reference to the application before him producing another school leaving certificate indicating the date of birth as 02.03.1961 and studied upto 6th Std. whereas in the school leaving certificate furnished him with his application the date of birth was shown as 01.06.1959 and having studied upto 8th std. and taking into account this fact the ALC(C), Bellary after calling for the casual labourers who were regularised *vide* notification dated 30.06.1999 who had been considered for appointment to Gr. D Posts submitted the FOC report consequent to which the CG has made this reference for adjudication. Thus the II Party while contending that from 19.02.1986 the I party workman having abandoned the job on his own there was no termination/retranchment at all and pursuant to the notification dated 30.06.1999 for considering all the casual and excasual labourers for absorption since he produced a false school leaving certificate his application for regularisation was rejected and thereby he is not entitle to seek regular permanent post of Gr. D in the railways being a ex-casual labour.

5. When the matter was posted for evidence of II Party while filling the affidavit of Prahalad Baburao Kale, Assistant Personnel Officer, Central Railway, Sholapur Division, Sholapur reiterating the Counter Statement examining him on oath as MW 1 got exhibited the Original Application submitted by the I Party workman seeking regularisation of his service pursuant to the notification issued on 30.6.1999; record regarding verification of Bio-data given by him wherein it is found the School Leaving Certificate furnished by him for proof of age being found false; the explanation given by the I Party workman before RLC(C), Bellary conceding the School Leaving Certificate furnished by him along with the application does not belong to him and it was inadvertently produced which was handed over to him by his father without knowing the fact that the certificate was in order and that he apologises for the same; Photostat copy of the School Leaving Certificate produced along with application; Photostat copy of the Service Record and copy of the affidavit filed by the I Party dated 03.05.2005 as Ex M-1 to Ex M-6 respectively. By the time the matter reached the evidence of I Party since he was no more amongst his LRs his wife examining herself as WW 1 stated that her deceased husband who was working in Railways was removed from service without making any enquiry 20 years back.

6. After close of the evidence, the learned advocate appearing for the I Party filed his written arguments, whereas the learned advocate appearing for the II Party addressed his oral arguments.

7. On appreciation of the pleadings oral and documentary evidence placed on record in the light of the arguments put forward by the respective advocates I have arrived at the conclusion that the reference is liable to be rejected for the following reasons:

REASONS

8. Though in the proceedings before the ALC(C), Bellary in FOC No. 8(02)/2005/RLC/BLY a specific contention was taken that I Party had on his own abandoned the job from 19.02.1986, there is no denial of the same in the Claim Statement thereby in the absence of any contrary evidence on record it has to be presumed that he had abandoned the job on his own since 19.02.1986. Of course, as admitted by the II Party itself in its Counter Statement during the period from 12.03.1985 to 31.12.1985 he had served for more than 240 days precisely 295 days. Therefore, if at all the II Party were to terminate his service as required under Section 25(f) of ID Act 1947 it was to give him one months notice in writing indicating the reasons and wait till the period of the notice was expired or pay him wages in lieu of such notice and failure to comply the same would have amount to illegal retrenchment but in the instant case the contention of the II Party that I Party on his own abandoned the job from 19.02.1986 being not denied there is no illegal retrenchment. It is further indicated from the evidence on record that since from 19.02.1986 he did not persue to continue his service and only when the II Party on 30.06.1999 issued a notification for considering all the eligible and ex-casual labourers for regularisation the I Party workman also submitted his application along with school leaving certificate as proof of his age and qualification and other required documents and on investigation the said school leaving certificate since found to be false being one not issued by the school shown to have issued it his application for regularisation was Rejected and this aspect has been conceded by the I Party workman before the ALC(C), Bellary which statement is produced at Ex M-3. Thereby the rejection of regularisation of services of the I Party by the II Party cannot be said to be arbitrary or illegal. In view of the above, I am of the considered view that though the I Party workman had worked for more than 240 days in a block period of 12 months having abandoned the job on his own from 19.02.1986 there being no retrenchment by the II Party it cannot be said that the II Party terminated his services without complying the mandatory provisions of Section 25(f) of the ID Act and secondly, for his own wrong in furnishing a false school leaving certificate in proof of his age and qualification loosing the opportunity of regularisation of service pursuant to the notification of the II Party dated 30.06.1999 is his own fault. It cannot be said that II Party denied him regularisation of service without valid reasons. Under the circumstances, the reference is liable to be rejected and accordingly I pass the following Order:

ORDER

The reference is allowed holding that the action of the management of SBM in passing the order of terminating his services by compulsory retirement from the services of the Bank against the workman Shri K. M. Shama Rao, Cashier-cum-Godown Keeper, State Bank of Mysore, Kolar Branch, Kolar w.e.f. 25.06.2003 being not legal and justified and that he is entitle for Reinstatement with Full Backwages, Continuity of Service and all other consequential benefits that he would have received in the absence of the impugned punishment of compulsory retirement imposed against him.

(Dictated to UDC, transcribed by him, corrected and signed by me on 12th April, 2013)

S. N. NAVALGUND, Presiding Officer

CORRIGENDUM TO SUBSTITUTE FINAL ORDER

ORDER

The reference is Rejected holding that the Central Railways, Solapur has not terminating the services of Sh. Rajappa, S/o Ayyappa, Ex-Casual Labourer in contravention of the provisions of Section 25(f) of ID Act and that he had on his own voluntarily abandoned the job from 19.02.1986 and that on his own fault of furnishing a false school leaving certificate in proof of his age and qualification he lost the opportunity of regularisation of his service pursuant to the notification issued by the II Party dated 30.06.1999. Under the circumstances the parties are directed to bear their own costs.

(Dictated to UDC, transcribed by him, corrected and signed by me on 8th October, 2013)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2013

का०आ० 2728.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट संदर्भ संख्या 1244/2006 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/12/2013 को प्राप्त हुआ था।

[सं० एल-12012/101/2005-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th December, 2013

S.O. 2728.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 1244/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank

of India, Region-I, Sector-17, and their workmen, received by the Central Government on 13/12/2013.

[No. L-12012/101/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 1244/2006

Registered on 30.1.2006

Sh. O.P Indal, President SBI SC/ST Employees Welfare Association, Chandigarh Circle No. 3086/2, Sector, 44D, Chandigarh.

...Petitioner

Versus

The Assistant General Manager, State Bank of India, Region-I, Sector 17, Chandigarh

...Respondents

APPEARANCES:

For the workman : Ex parte.

For the Management : Sh. S.K. Gupta Adv.

AWARD

Passed on 14.11.2013

Central Government *vide* Notification No. L-12012/101/2005 IR(B-I) Dated 25.11.2005, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of SBI Chandigarh in deduction of Rs. 5600 for the month of September and October, 1994 (modified as 1996) from the salary of Sh. Sanjiv Singla is illegal and unjustified? If so what relief he is entitled?"

In response to the notice, the workman appeared and filed statement of claim pleading that while working with the management, he was allotted flat No. 93, Block No. 16 in SBI Colony, Sector 42, as per rules against payment of HRA but the management, without any reason started deducting Rs. 2800 per month from September 1997 from the salary which is illegal as no inquiry was conducted and no opportunity of hearing was given to him and the deductions so made is illegal and he is entitled to recovery of Rs. 5600 deducted from his salary.

Management appeared and filed written statement pleading that the flat allotted to the workman was sublet in violation of the terms and conditions and on that account penal rent was imposed and being so, Rs. 2800 per month are being deducted from his salary *w.e.f.* September 1996. It is further pleaded that the workman filed Writ Petition No. 17022 of 1996 in this respect wherein the workman was asked to invoke the arbitration clause and the writ petition was dismissed. That the arbitrator has given the award and as such, the present reference is not maintainable.

Workman was proceeding *ex parte* vide order dated 20.5.2012.

The workman though filed his affidavit but did not examine himself by appearing in the witness box. The management also did not lead any evidence. A perusal of the order dated 7/5/1997 passed by the Hon'ble High Court in Civil Writ Petition No. 17022 of 1996 shows that the workman was advised to revoke the arbitration clause and the order reads as follows:—

Learned counsel for the petitioner during the course of arguments, prays that this petition may be dismissed as withdrawn enabling the petitioner to invoke arbitration clause in the agreement, Annexure P-2. This writ petition is dismissed as withdrawn. It is, however, made clear that if the arbitration proceedings turn in favour of the petitioner, the respondents shall return the entire amount recovered *vide* impugned orders, Annexures P3 and P4.

Again copy of the award passed by the arbitrator dated 2.7.2005 establish that the act of the bank was held to be legal and valid.

In view of the award of the arbitrator and the fact that the workman did not lead any evidence to challenge the act of the bank, it cannot be said that act of the management deducting Rs. 5600/- from the salary of the workman is illegal and unjustified. The workman is not entitled to any relief and the reference is answered accordingly against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2013

कांआ 2729.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट संदर्भ संख्या 63/2004 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/12/2013 को प्राप्त हुआ था।

[सं एल-41012/98/2004-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th December, 2013

S.O. 2729.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northern Railway, and their workmen, received by the Central Government on 13/12/2013.

[No. L-41012/98/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT : Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 63/2004

Registered on 17.1.2005

Sh. Harbans Singh, S/o Sh. Niranjan Singh, Village and PO. Kandhargarh Channa, Tehsil Dhuri, District, Sangrur, State-Punjab.

...Petitioner

Versus

The Divisional Railway Manager, Northern Railway, Ambala Cantt. AMBALA CANTT.

...Respondent

APPEARANCES:

For the workman : Sh. Karnail Singh Adv.

For the Management : Sh. R.S. Rana, Advocate.

AWARD

Passed on 21.11.2013

Central Government vide Notification No. L-41012/98/2004 IR(B-1) dated 10.12.2004, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Northern Railway, Ambala Cantt. in terminating the services of Sh. Harbans Singh, Ex-Chowkidar on 14-11-2003 *w.e.f.* 15.9.2003 is just and legal? If 'NOT' so, what relief the workman is entitled to and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was employed as a Gangman on 15.7.1984 and was made chowkidar on 27.5.2002 as he had met with an accident.

That his services were terminated on 14.11.2003 and *w.e.f.* 15.9.2003 without holding any proper inquiry. The proceedings were not held in his presence and he was not given an opportunity to cross-examine the witnesses and was not given any opportunity to lead defence evidence as much as copy of the inquiry report was not given to him. That the inquiry is illegal and the punishment awarded on its basis is also bad in law. That he be reinstated in service with all the benefits.

Respondent management filed written statement admitting that workman was working as chowkidar. But pleaded that while on duty, he was found sleeping during the night duty on 23.6.2002 and he was accordingly charge-sheeted. He submitted the reply and thereafter inquiry officer was appointed. Sh. Karnail Singh was deputed as defence helper but the workman did not join the inquiry proceedings and ultimately Inquiry Officer after issuing him several notices concluded the inquiry and submitted his report dated 31.7.2003 and its copy was supplied to the workman. Thereafter, the disciplinary authority passed the impugned order terminating the service of the workman and the said order is legal and valid.

The inquiry was held to be fair and proper *vide* order dated 14.3.2011.

Thereafter, the workman filed his affidavit reiterating his case as stated in the claim statement.

On the other hand the management has examined Ram Sewak, Office Superintendent who filed his affidavit deposing on the lines as contained in the written reply.

I have heard Sh. Karnail Singh counsel for the workman and Sh. R.S. Rana counsel for the management and perused the written submissions submitted by the learned counsel for the parties. lengthy arguments was advanced by learned counsel for workman to show that the inquiry held in the present case is not proper and submitted that workman was not given an opportunity to inspect the documents and he did not get any opportunity to defend the case and even his defence helper was not called as much as no independent witness was examined in support of the charges and thus the inquiry report is illegal.

The inquiry has already been held to be fair and proper *vide* order dated 14.3.2011 by this Court and the order was not challenged by the workman and therefore the arguments raised by the learned counsel to challenge the inquiry cannot be looked into now.

It was further argued that the order of punishment was passed on 14.11.2003 and was made effective from 15.9.2003 which is not tenable in the eyes of law. It was further contended that the punishment order was passed by Junior Scale Officer *i.e.* AEE/TRD/UME who is not equal to the rank of the appointing authority and as such the order of punishment is not legal and liable to be set aside. It was further submitted that the workman had rendered

18 years of service which was not taken into consideration while imposing the extreme penalty of dismissal from service and as such the order of dismissal be set aside.

The punishment order was passed on 15.9.2003 by AEE/TRD/Ambala and it is mentioned in the dismissal order that he was the disciplinary authority. It is not shown that if AEE/TRD/UME was not the disciplinary authority then who was the disciplinary authority qua the workman. Therefore, it is to be held that the order of punishment was passed by the disciplinary authority. This order was issued on 15.9.2003 and it cannot be said that it was passed on 14.11.2003 as alleged by the workman, though *vide* letter dated 14.11.2003 intimation was sent to different quarters regarding the passing of the order.

Though this Court can set aside the order of dismissal and award lesser punishment but, it depends on the facts of the case. The workman while performing the duty of the chowkidar was found sleeping on the night of 23.6.2002 at 4 am. Even he did not join the inquiry proceedings. In the circumstances no ground is made out to interfere with the punishment awarded by the disciplinary authority.

Thus the services of the workman were legally terminated on 15.9.2003 and not on 14.11.2003 and the workman is not entitled to any relief. The reference is answered against the workman. Let hard and soft copy of award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer.

नई दिल्ली, 13 दिसम्बर, 2013

का.आ. 2730.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 62/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/12/2013 को प्राप्त हुआ था।

[सं एल-12012/214/2004-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th December, 2013

S.O. 2730.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala, and their workmen, received by the Central Government on 13/12/2013.

[No.L-12012/214/2004-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH,

PRESENT : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 62/2004

Registered on 17.1.2005

Sh. Ram Chander, S/o Sh. Kantu Ram. Village Mayar,
Tehsil and District, Hissar (Haryana).

.... Petitioner

Versus

The Assistant General Manager-III, State Bank of
Patiala, Regional Officer, Kothi No. 120, Sector 15-A, Hissar.

.... Respondent

APPEARANCES:

For the workman : Sh. Arun Batra Adv.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

(Passed on 20.11.2013)

Central Government *vide* Notification No. L-12012/214/2004-IR(B-I) Dated 29.12.2004, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the claim of Sh. Ram Chander S/o Sh. Kantu Ram that he was engaged as a water Carrier during the period from October, 1997 to January, 2000 by the management of State Bank of Patiala is correct? If so, whether the action of the management in terminating his service *w.e.f.* January, 2000 is just and legal and what relief the disputant concerned is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that his father Kantu Ram was employed with the respondent management as Water Carrier since 1978-79 at Branch Office Mayyar who died on 25.10.1997. Thereafter the workman moved an application to the respondent through its Branch Manager on 26.10.1997 for his appointment as Water Carrier on compassionate grounds in place of his father. The then branch manager engaged the workman as Water Carrier *w.e.f.* 26.10.1997 and forwarded his application to the respondent management *vide* his letter dated 6.10.1999. The management used to pay him wages at the rate of Rs. 20/- per day. He asked the management to regularize his services but his services were terminated *w.e.f.* 6.1.2000 without conducting any inquiry, though he completed more than

240 days of service. The said act of the management is illegal. He also pleaded that after termination of his services, Sh. Dharamveer was employed in his place which is again against law.

Thus it is pleaded that he be reinstated in service with full back wages.

Respondent management filed written reply admitting that Kantu Ram, father of the workman was serving as water carrier on contract basis who died on 25.10.1997, but it is denied that the workman was employed on compassionate grounds. That the services of the workman were utilized on contract basis for fetching water paying him remuneration at the rate of Rs. 20/- per day. He was never recruited by the respondent and he has no right to claim employment.

In support of his case the workman appeared in the witness box and reiterated his case as stated in the claim statement.

On the other hand the management examined Satish Kumar who filed his affidavit reiterating the case as stated in the written statement and placed on record the vouchers.

I have heard Sh. Arun Batra counsel for the workman and Sh. N.K. Zakhmi counsel for the management.

It was argued by the learned counsel for the workman that workman was employed by the management on 26.10.1997 as water carrier and his services were terminated on 6.1.2000 without conducting any inquiry and without serving any notice and paying him any retrenchment compensation and as such the termination order is illegal.

I have considered the contentions of the learned counsel for the workman.

It is the definite case of the respondent management that the services of the workman were utilized on contract basis for fetching water and his remuneration was at the rate of Rs. 20/- per day. Workman while appearing in the witness box has admitted during cross-examination that he was engaged on daily wages at the rate of Rs. 20/- per day. That he was not engaged through Employment Exchange or any advertisement. That he was paid Rs. 20/- for the day he worked for the management. He further admitted that he was not engaged after 6th of January, 1999. Thus, it is clear from the case of the respondent management as well as from the cross-examination of the workman that he was engaged as a water carrier but on daily wages and he worked with the management only up to 6th January, 1999. Since he was working on daily wage basis he cannot claim any right to work with the management and reliance may be placed on:—

Divisional Forest Officer, Rohtak Vs. Jagat Singh and Another, it was observed in Para 4 of the judgment as follows:—

It may be noticed that the definition of retrenchment in Section 2(oo) of the Act is applicable to the provisions contained in Chapter VA containing Sections 25F and 25H of the Act. The termination of daily wager is not retrenchment falling within Section 2(oo)(bb) of the Act. Therefore, the workman who is a daily wager cannot be reinstated as it does not amount to retrenchment within the meaning of Sections 25F and 25H of the Act.

Reliance may also be placed on:—

Superintending Engineer, PWD, B & R, Bhiwani and Surender and Another, wherein it was observed that since the respondent workman was a daily wager and being not taken in service against sanctioned post, he is not entitled to reinstatement.

In result it is held that workman was engaged as a water carrier with the respondent management on daily wage basis where he worked up to 6th January, 1999 and the action of the management in terminating his services cannot be termed as illegal and workman is not entitled to any relief. The reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2013

का०आ० 2731.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 1287/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/12/2013 को प्राप्त हुआ था।

[सं एल-12012/187/2005-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th December, 2013

S.O. 2731.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1287/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Module-I, Sector 17-B, and their workmen, received by the Central Government on 13/12/2013.

[No. L-12012/187/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH****PRESENT :** Sri Kewal Krishan, Presiding Officer**Case No. I.D. No. 1287/2006**

Registered on 30.11.2006

Sh. Sanjeev Singla C/o Sh. O.P. Indal, President SBI SC/ST Employees Welfare Association No. 3086, Sector 44D, Chandigarh.

...Petitioner

Versus

The Deputy General Manager, State Bank of India, Module-I, Sector 17B, Chandigarh.

...Respondents

APPEARANCES:

For the workman : Ex parte.

For the Management : Sh. S.K. Gupta Adv.

AWARD**(Passed on 14.11.2013)**

Central Government *vide* Notification No. L-12012/187/2005 IR(B-I) Dated 3.11.2006, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of State Bank of India, Chandigarh in awarding penalty of censure and thereby depriving opportunity of promotion to Sh. Sanjeev Singla is legal and justified? If not, to what relief the concerned workman is entitled and from which date?"

In response to the notice the workman appeared and filed statement of claim pleading that he joined the respondent bank on 21.3.1980 and a false charge-sheet was served on him. The Inquiry Officer was appointed who submitted the report and on its basis, the punishing authority passed the impugned order awarding the penalty of censure which is illegal as the charge-sheet was vague and no proper inquiry was conducted and he was not given an opportunity to defend himself and his defence representative was not allowed to join the inquiry. He preferred an appeal which was also dismissed without considering his contentions. Thus the impugned order awarding punishment to him is illegal and void and be set aside, and he be awarded all the consequential benefits.

Management filed written reply pleading that a legal and valid inquiry was conducted and when charges were

proved against him, a proper punishment was awarded to him which is valid. That the reference is not maintainable.

The workman was proceeded ex parte *vide* order dated 30.5.2012.

The workman and the management did not lead any evidence.

The management has placed on record a photocopy of the proceeding of the inquiry which shows that the workman was charged for misappropriating a sum of Rs. 1, 53,000/- on 10.4.2000 by crediting the same in the name of Smt. Parminder Kaur. A proper charge-sheet was served on him to which he submitted reply. The Inquiry Officer conducted the inquiry and the management led evidence and its witness were cross-examined by the workman. But later on workman did not attend the proceedings and the Inquiry Officer submitted the report dated 31.8.2004 and on its basis, the order imposing the impugned penalty was imposed. The workman did not lead any evidence to show that there was any defect in the conduct of the inquiry. Thus it is to be held that a proper and fair inquiry was conducted.

The punishing authority only awarded a penalty of censure which cannot be said to be on the higher side. Considering the facts, the punishment awarded is proper.

Since the inquiry is legal and penalty of censure is also consequently valid and it cannot be said that depriving opportunity of promotion to the workman is illegal. The workman is not entitled to any relief and the reference is accordingly answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2013

कांआ 2732.—औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट संदर्भ संख्या 255/2002 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/12/2013 को प्राप्त हुआ था।

[सं एल-12012/12/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 13th December, 2013

S.O. 2732.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 255/2002 of the Central Government Industrial Tribunal-Cum-Labour Court, Hyderabad as shown in the Annexure, in the

Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 13/12/2013.

[No. L-12012/12/2002-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT ATHYDERABAD

PRESENT : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 3rd day of May, 2013

Industrial Dispute No. 255/2002

BETWEEN:

Sri K. Siva Prasad,
C/o Classic DTP,
Opp: Santhi Theatre,
Gandhi Nagar,
Vijayawada—3.Petitioner

AND

The Dy. General Manager,
State Bank of India, Zonal Officer,
Vijayawada-520 004.Respondent

APPEARANCES

For the Petitioner : M/s. C. Niranjan Rao & M. Subrahmanya Sastry, Advocates

For the Respondent : M/s. B.G Ravindra Reddy & B. V. Chandra Sekhar, Advocates

AWARD

In pursuance of the claim made by the Petitioner workman Sri K. Siva Prasad, Ex-Assistant (Cash & Accounts) (hereinafter be referred to as workman) invoking Sec. 2A of the Industrial Disputes Act, 1947 claiming that he was illegally terminated from service by the Respondent State Bank of India. The Government of India, Ministry of Labour by its order No. L- 12012/12/2002-IR(B-I) dated 9.5.2002 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Zonal Office, Vijayawada in terminating the services of Sri K. Siva Prasad, Ex-Assistant (Cash & Accounts), Jangareddigudem Branch with effect from 26/8/2000 on the ground of dereliction of duty is justified? If not, what relief the workman is entitled?"

On receipt of the references this Tribunal has registered and numbered the reference as I.D. No. 255/2002 and issued notices to both the workman and the management.

2. Sri K. Siva Prasad, the Petitioner has appeared, engaged M/s. C. Niranjan Rao & M. Subrahmanya Sastry, Advocates to represent him, whereas the Respondent has also appeared and engaged M/s. B.G. Ravindra Reddy & B.V. Chandra Sekhar, Advocates to represent them. Neither of the parties raised objection for either party engaging the advocate. Hence, they are permitted to do so.

3. The Petitioner filed his claim statement with averments in brief as follows:

Petitioner joined the services of the Respondent bank in the year 1998. At the relevant time, he was working as Assistant (Cash & Accounts) at Jangareddygudem branch of the Respondent bank. He was placed under suspension by a memo dated 20.11.1997 on the ground that there were certain irregularities reported to have been committed by him while he was working in Poolapalli Branch. A charge memo dated 28.11.1997 has been served on him alleging:—

1. That on 31.5.1997, the Petitioner made credit entry of Rs. 17000/- in the SB account of a customer by name Smt. D.V. Subbamma and Sri D. Narasimha Raju, without supporting cash voucher.

2. That the Petitioner made credit entry of Rs. 5000/- in CTL Account of M/s Sri Sreenivasa Foodware, and a further entry of Rs. 5000/- on 25.4.97.

3. That the Petitioner has issued cheques in favour of third parties from his personal SB Account without maintaining sufficient amount in account.

4. That the cheques were issued to third parties after closure of the account deliberately.

5. That the Petitioner had withdrawn LTC advance without eligibility. Petitioner submitted a detailed reply denying the truth of the allegations in the charge sheet. Uttar disregard to the said reply, enquiry was ordered against him. the enquiry was conducted with a closed mind. During that enquiry Petitioner was not granted sufficient opportunity. The Enquiry Officer *vide* his report dated 31.4.1999 has let the five of the charges proved and the last of the charge as not proved. The Disciplinary Authority accepted the findings of the Enquiry Officer and issued a show cause notice dated 16.6.99. Petitioner submitted his reply dated 30.6.99 bringing forth the facts to show that the Enquiry Officer's findings is not justified in the facts and circumstances of the case and the evidence brought on record. Further, the Disciplinary Authority without reference to the said reply, proceeded in a mechanical manner, rejected the explanation of the Petitioner and sought to impose punishment of discharge from service with superannuation benefits without disqualification for

future employment. Disciplinary Authority also proposed that the increments that had fallen due during the period of suspension shall stand cancelled *vide* proceedings dated 20.4.2000. Petitioner's representation was not considered in its merits and consequently Disciplinary Authority confirmed the order of punishment proposed in his earlier letter and passed a final order dated 26.8.2000. In the said final order surprisingly, the Disciplinary Authority reversed the findings of the Enquiry Officer in so far as the last charge which the Enquiry Officer held to be not proved, on extraneous grounds there was no notice to the Petitioner for revising the Enquiry Officer's report *de-nova*. Further more, the Disciplinary Authority without competence, to revise the Enquiry Officer's report as done so. It shows the farce of the enquiry. The Disciplinary Authority had no intention of accepting the enquiry report even from the beginning. Petitioner preferred an appeal before the Appellate Authority on 29.9.2000. The Appellate Authority *vide* his order dated 27.11.2000, concurred with the order of the Disciplinary Authority and rejected the appeal. Thereafter, Petitioner moved application under Sec. 10 of the Industrial Disputes Act, 1947, the same is now referred to this forum for adjudication. The findings of the Respondent basing on which the services of the Petitioner were terminated are wholly incorrect and untenable. Respondent failed to see that there is no monetary gain to the Petitioner nor any monetary loss to the Respondent. None of the account holder have ever made any complaint or they have not made any attempt to withdraw the amounts. Respondent ought to have seen that there was no ill-motive in making the entries and they was no ill-motive in the entries made and were only an incidental and un-intended mistake. In the evidence, the Respondent officers' could not confirmatively show that the initials belong to the Petitioner or that he had done it deliberately. Thus, the findings are perverse. The cheques were issued post dated. By the time the cheques could have come for clearance, Petitioner have been transferred from Poolapalli branch to Jangareddigudem branch. On such transfer he closed the account and left the place. Thus, the findings of the bank that cheques were issued after the closure of the account is unsustainable. None of the drawee of the said cheques had made any complaint or raised any issue about the said cheques or its non-payment. Thus, the findings on this issue are perverse and can not be sustained. The issue regarding drawal of the advance for leave fare is concerned, it is a bonafide application duly passed by the authorities concerned. The Enquiry Officer has found the Petitioner not guilty. Further, Disciplinary Authority without notice or an opportunity on that issue, had come to a domestic enquiry-*nova* finding holding the Petitioner guilty. This is not in consonance with principles of natural justice and thus is not sustainable. Petitioner has put in 12 years of service by the date of his suspension. For the enquiry and its final result five years time was taken. There had been no remark against the Petitioner during all these years

of his service. Though the employees with the allegations more graver nature of misconducts were dealt with lenient view. The Petitioner reserves his right to bring forth these details separately. The Petitioner is not employed elsewhere from the date of his suspension and he and members of his family suffered great hardship of illegal termination from service. He has been exposed deeply punishment and have been deprived of all the benefits which is also against principles of natural justice. His last drawn pay has been Rs. 4415/-. Thus, the order in Memorandum No. DPS/R-IV/66 dated 26.8.2000 passed by the Respondent and confirmed by Appellate Authority *vide* proceeding No. DPS/DGM/246, dated 23.11.2000 is to be set aside and consequently, Respondent is to be directed to reinstate the Petitioner into service with full back wages, continuity of service, all other attendant benefits.

4. Respondent filed his counter with averments in brief as follows:

The explanation given by the Petitioner for the charge sheet was found to be unsatisfactory. Thus, the Disciplinary Authority ordered enquiry appointing the Enquiry Officer. The Enquiry Officer conducted the domestic enquiry by violation of principles of natural justice and observing the procedure as laid down in the conduct of domestic enquiry against the charge sheeted employee. Petitioner availed the services of his Union Leader Sri T.M.S. Murthy, Dy. General Secretary of the SBI Staff Union, Hyderabad Circle, Vijayawada module The defence counsel has examined all the documents and cross examined the witnesses presented by the Presenting Officer. After getting the briefs(Arguments) from both sides, the Enquiry Officer submitted his report to the Disciplinary Authority on 31.5.1999 in which he held all the charges except charge 1.(6) (Annexure to the petition). The enquiry report was supplied to the Petitioner for making his submissions if any. He submitted his reply on 30.6.1999. After examining all the relevant issues, the Disciplinary Authority has tentatively decided to inflict the punishment "discharging the employee from Bank's service with superannuation benefits as would be due at that stage. A personal hearing was given to the Petitioner by Disciplinary Authority on 6.5.2000 at request. Petitioner also submitted a written representation in the said personal hearing. Taking into consideration the submissions of the employee in the personal hearing and the written representation submitted at the personal hearing, the Disciplinary Authority has issued final order, *vide* his memorandum No. DPS/R-IV/66, dated 26.8.2000 wherein the penalty of "Discharging the employee from Bank's service with superannuation benefits as would be due at that stage" was confirmed. Accordingly, the employee was discharged from bank's service with effect from 31.8.2000. The Petitioner preferred an appeal and after a careful examination of the entire domestic enquiry report and the proceedings of the Disciplinary Authority dated 23.11.2000, the Appellate Authority on

Petitioner's appeal, confirmed the orders of the Disciplinary Authority, the allegations that the Enquiry Officer's findings on charges 1 to 5 are not based on proper evaluation of the evidence tendered at the enquiry are not correct. After careful examination of entire documents and evidence, the Enquiry Officer gave his findings and they are sustainable. For the reasons that Petitioner has committed breach of trust by mis-utilization of his position in the bank. He is not entitled for any relief. The punishment awarded to him is not multiple punishment and not in violation of Sastry and Desai Awards. He was discharged from service in terms of 21(iv)(b) of 6th Bipartite settlement and para 521(5) of Sastry Award and Para 18(28) of Desai Award. There need not necessarily be a complaint from the depositors to unearth the fraud committed by the employees. The fraudulent intention of the Petitioner is clear from the proved misconduct mentioned in charges No. 1.1 to 1.6. He resorted to the misconduct while working in the clerical and cash counter as well. He retained the unused cheque leaves and for putting them to misuse. He did not hesitate to obtain unlawful pecuniary benefit from the bank. He was aware that no leave was available to his credit and he was not eligible for any LFC facility. However, he applied for advance of Rs. 8000 from the bank and got it sanctioned. In a financial institution like bank, honesty and integrity are of paramount importance. Fraudulent bent of mind on the part of the employee not only, spoils the image of the bank in the eyes of the public but also prejudicial to the interests of the bank. The management followed all the principles of natural justice at every stage of domestic enquiry and Petitioner was heard by the respective authority. The contention that Disciplinary Authority and Appellate Authority have approached the enquiry with closed mind is not at all correct. The Petitioner was discharged from service by proved misconduct. The punishment imposed is legal, valid and justified. The Petition is liable to be dismissed.

5. A memo has been filed by the Petitioner conceding that the domestic enquiry was validly held. Heard either party under Sec. 11(A) of the Industrial Disputes Act, 1947. Ex. W1, Ex. M1 to M7 are marked with consent by either party during the course of arguments. Written arguments are also filed and the same are considered.

6. The points that arise for determination are:

- (I) Whether the action of the Respondent bank in terminating the services of the Petitioner *w.e.f.* 26.8.2000 on the ground of on the ground of dereliction of duty is justified?
- (II) If not, what relief the workman is entitled to?

7. **Point No. (I):** As can be gathered from the material on record, the Petitioner was working as Assistant (Cash & Accounts) at Poolapalli branch of the Respondent and thereafter he was transferred to Jangareddygudem branch

and while so, the authorities of Respondent bank have found that certain irregularities were committed by the Petitioner while he was working in Poolapalli branch of the Respondent bank and there on the Disciplinary Authority suspended the Petitioner. With six charges, altogether charge sheet has been issued and was served on the Petitioner calling upon him to show cause as to why disciplinary action should not be initiated against the Petitioner, such show cause notice is marked as Ex. M2. Ex. M1 is the order of suspension showing that the Petitioner has been placed under suspension.

8. For Ex. M2 notice Petitioner has submitted Ex. M3 explanation. It is a very brief letter. It is merely said in this letter that he received Ex. M2 and that he denies the charges levelled against him. He has not chosen to give any explanation for any of the irregularities alleged to have been committed by him. Thus, he has chosen to make a bare denial. It is not at all an explanation. It is only a bare denial. Hence, the contention of the Petitioner made in his claim statement that he gave a detailed reply to the charge sheet and in utter disregard to it, the enquiry has been ordered, is an incorrect plea. If any explanation for the allegation is given immediately after such allegations are made and spontaneously, the same are to be certainly considered. But in this case, the Petitioner has chosen to be totally silent, except for making a denial. After Ex. W3 explanation was given, the Disciplinary Authority has issued Ex. M4 proceeding, initiating regular Departmental enquiry, appointing an Enquiry Officer and Presenting Officer. Ex. M5 is the letter under which certain correction in the name of the borrower mentioned in Ex. M2, has been made and communicated to the Petitioner.

9. Ex. W1 is the enquiry proceeding. After conducting the Departmental enquiry the Enquiry Officer has submitted his report dated 9.7.98. The said document has not been given marking though it is a very material document. As it is an undisputed fact that the report has been submitted, even if it is marked for identity sake now, no, prejudice will be caused to either party and on the other hand it will be helpful to the proceedings. Hence, the said document is marked as Ex. M8.

10. As can be gathered from the material on record, the Enquiry Officer has conducted the Departmental enquiry in the presence of the Petitioner and the Petitioner has participated through out the enquiry. During the enquiry PW1 and PW2 were examined and several documents were marked. Considering all this evidence and considering the contentions and counter contentions put forth on behalf of the Respondent and the Petitioner, Enquiry Officer has given his findings.

11. As can be gathered from the charge sheet and the enquiry proceeding, enquiry report, the charges levelled against the Petitioner in the charge sheet, have not been decided by the Enquiry Officer in their seriatum and they

were grouped and decided differently. The charges levelled in the charge sheet and the charges decided by the Enquiry Officer in their respective seriatim are as follows:—

Sl. No.	Charges as framed in the charge sheet	Sl. No.	Charges as decided by the Enquiry Officer
1	Petitioner was aware of the irregular position of his leave record and no leave was for his credit. In spite of it, he obtained an advance of Rs. 8000 on 9.6.97 to proceed on L.F.C. travel for which he is not eligible.	1.1	<i>It is reported that on 31.5.1997, while working in the cash counter, Petitioner made a credit entry for Rs. 17000 in the savings bank ledger account No. P-29-4581 of Smt. D.V. Subbamma and Sri D. Narasimha Raju, Joint Account and in the relative pass book and authenticated the resultant balance in the ledger and pass book with his initials without any supporting voucher. As an assistant (Accounts and Cash) working in the cash counter you were not required to make any entry and authenticate such entries in the pass book of customers.</i>
2	Petitioner's act of making credit entries in the ledgers, in the relevant pass books and authenticating the resultant balance with his initials without any supporting vouchers is an act prejudicial to the interests of the Bank which is a gross misconduct in terms of para 521(4) (j) of the Sastry Award read with the paragraph 18.28 of the Desai Award and subsequent bipartite agreements.	1.2	<i>Petitioner made a credit entry of Rs. 5000 in the CTL A/c No. 2/47 of M/s. Sri Srinivasa Footwear Prop. Shri G. Seshagiri Rao, and also made a credit entry for Rs. 5000 on 24.5.1997 in the pass book of the borrower and authenticated the resultant balance in the pass book.</i>
3	Petitioner's act of issuing cheques without maintaining sufficient balance in the account is in violation of the service rules governing his employment in the bank and an act of willful disobedience of lawful and reasonable orders of the management in terms of paragraph 521(4)(e) of the Sastry Award read with the paragraph 18.28 of the Desai Award and subsequent Bipartite Agreements.	1.3	<i>It is reported that Petitioner involved himself in pecuniary obligations with M/s. Usha Baala Chits & Investments (P) Ltd., Eluru and Rena Mini bankers Corporation and issued the cheques without keeping sufficient funds in the SB A/c No. P25/3900.</i>
4	Petitioner's act of involving himself in Pecuniary obligations with M/s. Usha Bale Chits & Investments (P) Ltd. and Rena Minis Bankers Corporation is in violation of service rules governing his employment in the bank.	1.4	<i>It is reported that Petitioner deliberately issued the following cheque subsequent to the closure of SB A/c No. 25/3900 for Rs. 500 to Rena Mini Bankers Corpn.</i>
5.	Petitioner's act of retaining the unused cheque leaves which out to have been surrendered to the bank on closing the relative accounts and issuing so retained cheques intentionally to third parties is an act indicating lack of integrity and prejudicial to the interests of the bank in terms of para 521(4)(j) of the Sastry Award read with para 18.28 of the Desai Award and subsequent bipartite agreements.	1.5	<i>It is reported that Petitioner deliberately issued the cheque subsequent to closing the SB A/c No. S 32.</i>
6	Petitioner's act of obtaining an advance of Rs. 8000 to proceed on leave far concession for which he was not eligible is an act indicating his intention of obtaining a pecuniary benefit from the bank by fraudulent means which is prejudicial to the interests of the bank in terms of para 521(4)(j) of the Sastry Award read with the paragraph 18.28 of the Desai Award and subsequent bipartite agreements.	1.6	<i>It is reported that Petitioner was aware of the irregular position of his leave record and no leave was for his credit. In spite of it, he obtained an advance of Rs. 8000 on 9.6.97 to proceed on LFC for which he is not eligible.</i>

On perusal of the above referred charges and the manner in which they were decided by the Enquiry Officer it may be seen that the second charge in the charge sheet has been decided as charges 1.1 and 1.2 in Ex.M8, the enquiry report. Charge No. 4 in the charge sheet is decided as 1.3 in the enquiry report. Charges 3 and 5 of the charge sheet are decided as charges 1.4 and 1.5 in the enquiry report. Charges 1 and 6 of the charge sheet are decided as charge 1.6 in the enquiry report.

12. The findings of the Enquiry Officer are as follows:—

Charges	Findings
1.1	Proved
1.2	Proved
1.3	Proved
1.4	Proved
1.5	Proved
1.6	Not proved

As to the finding on the second charge, which is decided as charges 1.1 and 1.2 in the Ex. M8 is concerned, it is being challenged by the Petitioner on three grounds.

13. The first ground is that account holders never complained against the Petitioner and they were not examined as witnesses. Regarding this aspect one can clearly see that the real victim of this event is the bank but not the customers. As far as they are concerned, the material on record shows that they credited the amount to the bank and the said credit entry has been entered into their respective pass books. There was no possibility for them to understand that the said amount was not actually credited into the various relevant accounts of the bank. Whereas since the said entries were not made, bank has been defrauded. As the credit entry is there in the account pass book, the interest of the account holder has been safeguarded. Thus, there is no possibility for the account holder to make a complaint or to give any evidence.

14. The other point on which Petitioner is attacking the findings of these charges is that the authentication initially and signatures of the Petitioner were not properly proved. This contention also can not be tested for the reason that PW1 and PW2 who are the officials of the branch of the bank in which Petitioner also has been working and who are well acquainted with his signatures and initials, have categorically identified the disputed signatures and initials as that of the Petitioner. The knowledge and ability of these witnesses to identify the signatures and initials of various bank employees also has been decided while they were under examination and they withstood the said test. Thus, their evidence with this regard can be given due credit and it has been given proper credit, by the Enquiry Officer.

15. The other contention being raised in this regard by the Petitioner is that bank has not suffered any loss. No doubt bank has not suffered any loss, since, the loss was made good latter as per the evidence of PW1. Thus, on the above discussed ground Petitioner can not take shelter and plead that he is to be found not guilty of the charge. The finding of the Enquiry Officer regarding this charge is just and acceptable and is basing on sound reasoning.

16. As to the charges 1.3, 1.4 and 1.5 of the enquiry report are concerned, it is an undisputed fact that Petitioner involved himself in pecuniary obligations with M/s. Usha Bala Chits and Rena Mini Banking Corporation. He is not denying the fact that involving in such pecuniary obligations is in violation of service rules governing the employment of the bank, also. Likewise, admitted he retained the unused cheque leaves which could have been surrendered to the bank on closing the relative accounts and on the other hand he issued the retained cheques to third parties. It is the claim of the Respondent bank that it amounts to lack of integrity and prejudicial to the interests of the bank in terms of para 521(4)(j) of the Sastry Award, read with para 18.28 of the Desai Award and subsequent Bipartite agreements. As to this contention also there is no answer from the Petitioner. How such acts would not reflect lack of integrity and are not prejudicial to the interest of the bank, in the light of the above referred awards and subsequent Bipartite agreements are concerned, he is not explicit. He is merely claiming that by such acts on his part, no financial loss occurred to the bank and further that none of the third parties made any complaint against him. When the fact remains that he retained the cheque leaves after closing of the relative accounts without surrendering the same to the bank and also issued the same to third parties and such acts evidently indicates lack of integrity and prejudicial to the interests of the bank in terms of the above referred awards and subsequent bipartite agreements. Just because no third party came forward to complain against the Petitioner, the same would not save the petitioner from the guilt of misconduct in his services.

17. Thus, the findings arrived at in respect of charges 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 as mentioned in the enquiry report can not be taken as perverse for any reason. After receiving Ex. M8 enquiry report the Disciplinary Authority afforded opportunity of personal hearing to the Petitioner.

18. Thereafter the Disciplinary Authority has issued proceeding dated 26.8.2000 imposing the penalty of discharge of the Petitioner from bank's service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment as provided for in paragraph 21(iv)(B) of the 6th Bipartite settlement dated 15.5.1995 between the State Bank of India and All India State Bank of India Staff Federation on service conditions in supercession of paragraph 521(5) of the Sastry Award read with paragraph 18-28 of the Desai Award.

He further held that the period of suspension will be treated as not on duty and it will not be counted for terminal benefits. And further that the increments that have fallen due during the period of suspension will stand cancelled, and that no back wages whatsoever will be paid except subsistence allowance paid during the period of suspension.

19. Ex. M7 is the letter dated 23.11.2000 wherein the Appellate Authority, to whom the appeal has been preferred by the Petitioner against the order of the Disciplinary Authority has informed the Petitioner that as there is no merit in the appeal, he dismissed the same and a copy of the proceedings have been enclosed to this letter.

20. While considering the Enquiry Officer's report, the Disciplinary Authority accepted the findings of the Enquiry Officer regarding charges 1.1 to 1.5 but deferred with that regarding charge No. 1.6 assigning reasons for such deferring. He held, the said charge also as provided against the Petitioner. He came to the conclusion that just because, the Branch Manager blindly and without referring to the leave record of the Petitioner passed sanction order, Petitioner can not take advantage of it and plead innocence of this charge, as he would have got knowledge of his leave position. This finding can not be taken as perverse finding, for the reason that an employee who intends to avail LFC will at first verify his leave position in ordinary course of conduct. Only if he got sufficient leave title, then, he would go for applying for leave fare concession and seek for sanctioning of advance and take other related steps. Thus, the Petitioner's seeking leave advance and also getting it sanctioned without having sufficient leave title, can reasonably be found fault with.

21. In view of the foregone discussion of the material on record, it can clearly be seen that either the finding of the Enquiry Officer, or that of the Disciplinary Authority or that of the Appellate Authority can be find fault in any manner.

22. Learned Counsel for the Petitioner is relying upon the principles laid down in the case of Rupee Co-operative Bank Ltd., Pune Vs. Shailesh V. Vaidya & Ors. (2008 LLR 13 at page 13, Bombay High Court) in support of his contention that, misappropriation against the workman has not been proved, he can not be find fault with and he is to be reinstated into service. In the present case, misappropriation of the amounts and also misconduct have been sufficient established. Petitioner has no doubt defrauded the bank by not crediting the amount which he collected from the customers.

23. Learned Counsel for the Petitioner further relied upon the principles laid down in the case of Suresh Babu K. and Deputy General Manager, State Bank of India, Zonal Office, Tirupathi and others (A.P. High Court), in support of his contention that the Petitioner is to be exonerated

from the finding of guilt in this case. The facts and circumstances of the cited case are totally different from that of the present case. Unlike, the facts in the cited cases, either the Enquiry Officer of Disciplinary Authority in this case never acted on any allegation, which are not alleged in the charge sheet and they have not relief upon any documents which they refused to take on record or were not introduced in the domestic enquiry proceedings. Thus, the principles laid down in the cited case is not applicable to the facts of the present case.

24. Learned Council for the Petitioner is further relying upon the principles laid down in the case of M.C. Charati Vs. Personnel Manager and Disciplinary Authority Syndicate Bank & Others (2000 LLR page 1303) Karnataka High Court, in support of his contention than when the ultimate of intention defraud the bank by the employee is not proved in certainty, there is no reason to believe that there is misconduct and that such conduct could have been occasioned on account of misjudgement on the part of the employee and it does not call for imposition of punishment which is deterrent in nature. In the present case, the established conduct of the Petitioner clearly shows that he got every intention to defraud the bank. This can be spelled out from the findings arrived in connection with the charges 1.1, 1.2 and 1.6 in the enquiry report and the proceedings of the Disciplinary Authority.

25. Learned Counsel for the Petitioner further relied upon the principle laid down in the case of Punjab National Bank Ltd., Zonal Office, Chennai and A.K. Jayaprakash and Another WP No. 15267/2001 of High Court of Madras), in support of his contention that when there is no mala fide intention, in the activities of the employee and when the bank has not incurred any loss from the said activities, dismissal from the service is not a sustainable punishment. But as far as the facts of the present case are concerned, there is mala fide intention which can be gathered from the conduct of the Petitioner, and which established on record, as already discussed above. When the Petitioner has chosen to defraud the bank which is a financial institution dealing with public moneys, by not properly crediting the amounts paid by the customers to the bank either in the savings bank accounts or in the loan accounts, he deserves only one punishment i.e., removal from service. Unless the bank got confidence in its employees it can not entrust them the duties dealing with financial transactions. When confidence in them is lost, such employees can not be asked to be continued in the employment.

26. When the punishment awarded in this case is considered one can see that it is a most considerate decision taken by the Disciplinary Authority foreseeing the future of the Petitioner and giving leverage for the same, by spelling out the words "without disqualification for future employment".

27. As to the withholding of the increments fallen due, during the period of suspension is concerned, it is not

unreasobale. Petitioner has been under suspension at the relevant time. He was being awarded with subsistence allowance and he never worked during that period. Considering the circumstances, it is not an unreasobale decision on the part of Disciplinary Authority that Petitioner is not entitled for any increment during that period. The said period need not be treated as duty period.

28 In view of the fore gone discussion of the material on record, it can safely be held that the action of the Respondent bank in terminating the services of the petitioner w.e.f. 26.8.2000 by discharging him from service with superannuation benefits without disqualification for future employment, and considering the period of his suspension as not duty is a sustainable order and it is justified.

The point is answered accordingly.

29. Point No. II: In view of the finding given on point No. I Petitioner is not entitled for any relief.

The point is answered accordingly.

30. In the result, the petition is dismissed. Award is passed accordingly.

Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 3rd day of May, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the petitioner

Ex. W1: Copy of enquiry proceedings

Documents marked for the Respondent

Ex. M1:	Suspension order dt. 20.11.1997
Ex. M2:	Lr. No. DPS/R-IV/No. 55 dt. 28.11.97 to the Petitioner show cause notice
Ex. M3:	Explanation of Petitioner to Ex. M2 dt. 10.12.1997
Ex. M4:	Lr. No. DPS/R-IV/No. 73 dt. 16.12.97 to the Petitioner - enquiry notice
Ex. M5:	Lr. No. DPS/R-IV/No. 52 dt. 9.7.1998
Ex. M6:	Lr. No. DPS/R-IV/No 15 dt. 20.4.2000 reg. for onward transmission of enquiry proceeding to the Petitioner
Ex. M7:	Lr. No. DPS/DGM/246 dt. 23.11.2000 to the Petitioner enclosing proceedings of Appellate Authority.
Ex. M8:	Enquiry report